CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1948

No. 292

GEORGE SMITH, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 22, 1948.

CERTIORARI GRANTED DECEMBER 6, 1948.

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GOVERNMENT'S EXHIBITS:*

1. Batch of papers and documents (marked in evidence at fol. 40)

2. Batch of papers and documents (marked in evidence at fol. 41)

3. Batch of papers and documents (marked in evidence at fol. 42)

4. Batch of papers and documents (marked in evidence at fol. 43)

5. Batch of contracts (marked in evidence at fol. 44)

6 for Identification. Contract dated June 22, 1943 (marked for identification at fol. 108)

7 for Identification. Subpoena (marked for identification at fol. 46)

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* Omitted pursuant to stipulation

8. Letter dated March 2, 1945 (marked in evidence at fol. 49)

9. Invoice dated May 24, 1945 (marked in evidence at fol. 84)

10. 2 checks (marked in evidence at fol. 84)

11. Invoice dated June 11, 1945 (marked in evidence at fol. 84)

12. Bill dated June 15, 1945 (marked in evidence at fol. 84)

13 for Identification. Receipt dated June 7, 1945 (marked for identification at fol. 83)

14 for Identification. Bill dated April 10, 1945 (marked for identification at fol. 86)

15 for Identification. Check dated April 4, 1945 (marked for identification at fol. 88)

16 for Identification. Bill and check dated June 6, 1945 (marked for identification at fol. 91)

17. 5 invoices (marked in evidence at fol. 100)

18. 7 checks (marked in evidence at fol. 100)

19. 3 checks (marked in evidence at fol. 104)

20. Letter dated February 16, 1945 and 2 invoices (marked in evidence at fol. 126)

21. Letter dated February 12, 1945 and invoices (marked in evidence at fol. 126)

22. Letter dated February 15, 1945 and 4 invoices (marked in evidence at fol. 132)

23. Letter dated February 20, 1945 and 7 invoices (marked in evidence at fol. 133)

24. Letter dated March 7, 1945 and 2 invoices (marked in evidence at fol. 134)

25. Letter dated March 8, 1945 and 5 invoices (marked in evidence at fol. 135)

26. Letter dated May 14, 1945 and 4 invoices (marked in evidence at fol. 140)

27. Letter dated May 23, 1945 and 4 invoices (marked in evidence at fol. 140)

28. Letter dated June 21, 1945 and 3 invoices (marked in evidence at fol. 140)

29. Letter dated June 27, 1945 and invoice (marked in evidence at fol. 140)

30. Letter dated July 8, 1945 and invoice (marked in evidence at fol. 140)

31. Letter dated July 9, 1945 and 2 invoices (marked in evidence at fol. 140)

32. Letter dated July 18, 1945 and invoice (marked in evidence at fol. 140)

33. 2 Ledger Sheets, Accts. Rec. (marked in evidence at fol. 138)

34. Folder (Invoices) September 1, 1944 to August 31, 1945 (marked in evidence at fol. 185)

35. Folder (Invoices) September 1, 1945 to August 31, 1946 (marked in evidence at fol. 185)

36. Letter (Copy) September 28, 1945 (marked in evidence at fol. 186)

37. Letter (Copy) October 10, 1945 (marked in evidence at fol. 187)

38 for identification. Bills and Checks (Wolfe) (marked for identification at fol. 191)

38a for identification. Paper with writing (marked for identification at fol. 194)

38b. Invoice September 29, 1945 (marked in evidence at fol. 195)

38c. Invoice October 18, 1945 (marked in evidence at fol. 199)

38d for identification. Debit Slip (marked for identification at fol. 196)

38e. Checks October 3, 1945 (marked in evidence at fol. 202)

38f. Checks October 5, 1945 (marked in evidence at fol. 202)

38g. Paper with writing (marked in evidence at fol. 196)

38h. Paper with writing (marked in evidence at fol. 196)

39. Bill (marked in evidence at fol. 206)

39a. Paper with writing (marked in evidence at fol. 209)

39b. Check dated September 28, 1945 (marked in evidence at fol. 207)

39c. Check dated July 26, 1945 (marked in evidence at fol. 208)

39d. Check dated July 27, 1945 (marked in evidence at fol. 208)

39e. Check dated July 27, 1945 (4000) (marked in evidence at fol. 208)

39f. Bill dated August 9, 1945 (marked in evidence at fol. 209)

39d. 4 checks (original) 39d (marked in evidence at fol. 227)

39e. 4 checks (original) 39e (marked in evidence at fol. 228)

40. piece of cloth (marked in evidence at fol. 212)

41. 4 letters and 2 invoices (marked in evidence at fol. 234)

42. 3 letters and 11 invoices (marked in evidence at fol. 234)

43. Letter dated September 24, 1945 (marked in evidence at fol. 240)

44. Ledger sheet (marked in evidence at fol. 241)

45. Letters and 30 invoices (marked in evidence at fol. 241)

46. Letters and 6 invoices (marked in evidence at fol. 249)

47. Letter dated April 13, 1945 and note attached (marked in evidence at fol. 249)

48. Ledger sheet (marked in evidence at fol. 248)

49. Letter dated March 21, 1945 and 3 invoices (marked in evidence at fol. 266)

50. Ledger sheet (marked in evidence at fol. 264)

51. Letter and 2 invoices (marked in evidence at fol. 264)

52. Ledger sheet (marked in evidence at fol. 270)

53. 3 ledger sheets (marked in evidence at fol. 282)

54. Letter dated September 18, 1945 (marked in evidence at fol. 285)

55. Letter and 14 invoices (marked in evidence at fol. 274)

56. Letter and 4 invoices (marked in evidence at fol. 274)

57. Letter and 6 invoices (marked in evidence at fol. 276)

58. Letter and 1 invoice (marked in evidence at fol. 276)

59. Letter and 11 invoices (marked in evidence at fol. 276)

60. Letter and 4 invoices (marked in evidence at fol. 278

61. Letter and 31 invoices (marked in evidence at fol. 279)

62. Letter and 6 invoices (marked in evidence at fol. 280)

63. Letter and 2 invoices (marked in evidence at fol. 281)

64. Letter and 1 invoice (marked in evidence at fol. 281)

65. Ledger sheet (marked in evidence at fol. 305)

66 for identification. Letter dated March 16, 1945 (marked for identification at fol. 272)

66a. Business card (Deeb) (marked in evidence at fol. 298)

67. Letter dated March 31, 1945 and 28 invoices (marked in evidence at fol. 301)

68. Letter dated June 8, 1945 and 8 invoices (marked in evidence at fol. 302)

69 for Identification. Letter dated May 21, 1945 (marked for identification at fol. 305)

70. Letter dated July 26, 1945 (marked in evidence at fol. 323)

71. Letter dated April 23, 1945 and 28 invoices (marked in evidence at fol. 319)

72. Letter dated May 1, 1945 and 17 invoices (marked in evidence at fol. 319)

73. Letter dated June 11, 1945 and 28 invoices (marked in evidence at fol. 321)

74. Letter dated February 7, 1945 and 3 invoices (marked in evidence at fol. 376)

75. Letter dated February 27, 1945 and 8 invoices (marked in evidence at fol. 376)

76. Letter dated March 10, 1945 and 2 invoices (marked in evidence at fol. 376)

77 for Identification. Letter dated December 21, 1944 (marked for identification at fol. 320)

78 for Identification. Letter dated February 6, 1945 (marked for identification at fol. 320)

79. 2 Ledger sheets (marked in evidence at fol. 376)

80. Letter dated July 17, 1945 (marked in evidence at fol. 322)

81. Invoice dated August 31, 1945 (marked in evidence at fol. 322)

82. Invoice dated June 12, 1945 (marked in evidence at fol. 376)

83. Invoice dated July 2, 1945 (marked in evidence at fol. 376)

84. Report dated November 7, 1945 (marked in evidence at fol 457)

87. Invoice dated October 13, 1945 and papers attached (marked in evidence at fol. 425)

89. Invoice dated October 11, 1945 and papers attached (marked in evidence at fol. 424)

90. 6 Invoices (marked in evidence at fol. 436)

91. Invoice and receipt (marked in evidence at fol. 432)

91a. Check dated April 16, 1945 (marked in evidence at fol. 432)

92. 6 checks (marked in evidence at fol. 436)

93. 8 Invoices (marked in evidence at fol. 442)

94. 12 Invoices (marked in evidence at fol. 446)

95. 5 Invoices (marked in evidence at fol. 442)

96. 11 Invoices (marked in evidence at fol. 448)

97. Affidavit dated November 14, 1947 (marked in evidence at fol. 458)

98. Invoice and papers attached (marked in evidence at fol. 465)

99. Invoice and papers attached (marked in evidence at fol. 461)

100 for Identification. 2 checks (marked for identification at fol. 458)

101. 3 Invoices and papers attached (marked in evidence at fol. 480)

102. Invoice and paper attached (marked in evidence at fol. 480)

103. Invoice dated May 9, 1945 (marked in evidence at fol. 492)

104. Invoice and check dated May 9, 1945 (marked in evidence at fol. 492)

105. Invoice dated March 22, 1945 and papers attached (marked in evidence at fol. 499)

106. Invoice dated April 5, 1945 and papers attached (marked in evidence at fol. 499)

107. Invoice dated April 7, 1945 and papers attached (marked in evidence at fol. 499)

108. Invoice dated March 26, 1945 and papers attached (marked in evidence at fol. 499)

109. Invoice dated February 5, 1945 and papers attached (marked in evidence at fol. 499)

110. Invoice dated February 28, 1945 and papers attached (marked in evidence at fol. 499)

111. Invoice dated February 28, 1945 (marked in evidence at fol. 499)

112. Check dated February 5, 1945 (marked in evidence at fol. 499)

113. Check dated May 9, 1945 (marked in evidence at fol. 499)

114. Check dated December 18, 1945 (marked in evidence at fol. 499)

115. Check dated February 28, 1945 (marked in evidence at fol. 499)

116. 6 Receipts (marked in evidence at fol. 499)

117. 11 Invoices (marked in evidence at fol. 537)

118. 11 Checks (marked in evidence at fol. 537)

119 for Identification. Affidavit dated August 27, 1946 (marked for identification at fol. 524)

120. Invoice dated September 8, 1945 (marked in evidence at fol. 556)

121. Invoice dated July 16, 1945 (marked in evidence at fol. 556)

122. Invoice dated August 13, 1945 (marked in evidence at fol. 556)

123. Invoice dated July 9, 1945 (marked in evidence at fol. 556)

124. Invoice dated November 2, 1945 (marked in evidence at fol. 556)

125. Invoice dated August 13, 1945 (marked in evidence at fol. 556)

126. Invoice dated August 13, 1945 and papers attached (marked in evidence at fol. 556)

127. 13 Checks (marked in evidence at fol. 556)

128. Signature card (Deeb) (marked in evidence at fol. 565)

129. Signature card (Deeb) (marked in evidence at fol. 565)

131 for Identification. Sales book (marked for identification at fol. 621)

131a. Sales slip 8191 dated June 6, 1942 (marked in evidence at fol. 623)

132. Sales slip 9340 (marked in evidence at fol. 624)

133. Sales slip 9146 (marked in evidence at fol. 624)

134. Telephone Identification Card (Levine) (marked in evidence at fol. 631)

135. Telephone Identification Card (Raichel) (marked in evidence at fol. 632)

136. Telephone Identification Card (Borab) (marked in evidence at fol. 632)

137. Signature Card (Daisart) (marked in evidence at fol. 634)

138. Batch of deposit slips (marked in evidence at fol. 636)

139. Ledger sheets (Bank Account) (marked in evidence at fol. 636)

140. Signature Card (Smith) (marked in evidence at fol. 637)

141. Deposit slips (marked in evidence at fol. 637)

142. Ledger sheets (Smith) (marked in evidence at fol. 637)

143. Bank file (Daisart) (marked in evidence at fol. 641)

144. Bank file (Ida Smith) (marked in evidence at fol. 643)

145 for Identification. Bank file (G. Smith) (marked for identification at fol. 639)

146. Signature card and Resolution (Daisart) (marked in evidence at fol. 644)

147 for Identification. Statement dated April 30, 1946 (marked for identification at fol. 646)

147a. Pages 7 to 20 of statement (marked in evidence at fol. 646) and printed at page 1009

148. Invoice dated May 17, 1945 and papers attached (marked in evidence at fol. 665)

149. Invoice dated April 5, 1945 and papers attached (marked in evidence at fol. 665)

150. Invoice dated May 10, 1945 and papers attached (marked in evidence at fol. 665)

151. Schedule 1 (marked in evidence at fol. 720)

152. Schedule 2 (marked in evidence at fol. 720)

153. Schedule 3 (marked in evidence at fol. 720)

154. Schedule 4 (marked in evidence at fol. 720)

155. Schedule—Total charges (marked in evidence at fol. 723)

156. Schedule of Order and Receipts (marked in evidence at fol. 733)

157. Schedule of Powder bags (marked in evidence at fol. 734)

158. Schedule of Sales (marked in evidence at fol. 743)

Criminal Docket

Docket C 125/239

THE UNITED STATES

vs.

DAISART SPORTSWEAR INC.,
GEORGE SMITH
IDA SMITH
ALBERT J. DEEB

Violation of Title 50 Appx Sec 633 and Title 18 Sec 550 U S C. Unlawfully applying and extending and aiding & abetting application and extension of priorities in cotton and rayon materials

DATE Month	Day	Year	Defendant	Fine
Dec	3	1947	Daisart Sportswear Inc	$350,000—
Dec	3	1947	George Smith	350,000—
Dec	3	1947	Albert J. Deeb	5000—
Mar	31	1947	Filed Information	
Mar	31	1947	Filed notice of appearance by Walter R. Hart, Atty for Geo. Smith, Ida Smith and Daisart Sportswear Inc.	
Apr	3	1947	Daisart Sportswear Inc. Pleads Not Guilty by Walter Hart, Atty	

Criminal Docket

DATE Month	Day	Year	
Apr	3	1947	George Smith Pleads Not Guilty Bail fixed at $5000.
Apr	3	1947	Ida Smith Pleads Not Guilty Bail fixed at 2500.
Apr	3	1947	Albert J. Deeb Pleads Not Guilty Bail fixed at 2500. Bails to cover this Information and C 125/240. Paroled to 4 P.M. to give bail. Individual defts to be fingerprinted. Bondy J.
Apr	3	1947	Filed bond for George Smith dated 4/3/47 for $5000. Continental Cas. Co.
Apr	3	1947	Filed bond for Albert J. Deeb dated 4/3/47 for $2500. Continental Cas. Co.
Apr	3	1947	Filed bond for Ida Smith dated 4/3/47 for $2500. Continental Cas. Co.
Jun	25	1947	Filed Transcript of record of proceedings, dated 4/3/47.
Nov	10	1947	Filed notice of appearance by Morris Siegel as Atty. for deft Albert J. Deeb.
Nov	17	1947	Govt moves to dismiss as to deft. Ida Smith Motion granted. Govt moves to consolidate for trial C 125/239, C 125/240 and C 126/293. Motion granted. For particulars of trial see indictment C 126/295 Ryan J. Trial continued 11/18/47, 11/19/47, 11/20/47, 11/21/47, 11/24/47

DATE Month Day Year		
Nov 25 1947	Trial continued—Govt moves to dismiss counts 2-4-5-6-7-8-9-10 13 to 21 inc. 25, 29, 33, 34, 35, 38, 39, 40 & 41 as against deft. Deeb. Motion granted Govt. moves to dismiss counts 8-15-33 & 38 as against defts. Daisart Sportswear Inc. & Geo. Smith—Motion granted— Motions for judgment of acquittal—Denied	7
Nov 26 1947	Trial cont'd	
Nov. 28 1947	Trial cont'd and concluded— Verdict—A. J. Deeb—Guilty on Cts 12-22-23-29-31 and Not Guilty on Cts 1-3-11-24-27-28-30-32-36 & 37.— Defts—Daisart Sportswear Inc & George Smith—Guilty on counts 1 to 7 inc. 9 to 12 inc. 14, 16 to 32 inc. 34 to 37 inc. 40 & 41. Not Guilty on Cts. 13 and 39. All deffs move to set aside verdict—Motion denied Sentences adjd to 12/3/47 at 2:30 P.M. Room 506. Bail cont'd— Ryan J.	8
Dec 3 1947	Filed Judgment #48876. Daisart Sportswear Inc—Fined $10,000. on each of counts 1 to 7 inclusive, counts 9 to 12 inclusive, count 14, counts 16 to 32 inclusive, counts 34 to 37 inclusive and counts 40 and 41. Total fines $350,000. Sylvester J. Ryan J.	9

Criminal Docket

DATE Month Day Year	
Dec 3 1947	Filed Judgment #48882 George Smith— One year and fined $10,000. on each of counts 1 to 7 inclusive, counts 9 to 12 inclusive, count 14, counts 16 to 32 inclusive, counts 34 to 37 inclusive and counts 40 and 41. Prison sentences to run concurrently with each other at a place of confinement to be designated by the Attorney General of the United States. Remanded
11	Total fine $350,000. and to stand committed until fine is paid or he is otherwise discharged according to law Bail pending appeal fixed at $10,000. to cover C 125/239, 240 & C 126/295. Sylvester J. Ryan J.
Dec 3 1947	Filed Judgment #48879. Albert J. Deeb— One year and fined $1000. on each of counts 12-22-23-29 & 31. Prison sentences to run concurrently at a
12	place of confinement to be designated by the Attorney General of the United States. Remanded. Total fine $5000. and to stand committed until fine is paid or he is otherwise discharged according to law Bail pending appeal fixed at $2500. to cover C 125/239, 240 & C 126/295. Sylvester J. Ryan J.

Criminal Docket

Month Day Year DATE.		
Dec 3 1947	Issued committments & copies for George Smith and Albert J. Deeb.	13
Dec 4 1947	Filed stipulation that appeals from the judgments of conviction on C 125/239, 240 & C 126/295 be prosecuted as one appeal. So ordered. Ryan *J.*	
Dec 4 1947	Filed Notice of Appeal by Daisart Sportswear Inc., George Smith & Albert J. Deeb. See C 126/295	
Dec 12 1947	Filed remands for A. J. Deeb & G. Smith 12/3/47— Ryan *J.*	14
Dec 30 1947	Filed Transcript of record of proceedings, dated 11/17/47 to Dec 3, 1947—(2 volumes)	
Jan 10 1948	Filed stipulation and Order extending time to file record on Appeal etc to and including 2/16/48. So ordered— Clancy *J.*	
Jan 14 1948	Filed stipulation and order changing testimony in manner specified in stipulation. Ryan *J.*	15

Criminal Docket

Docket C 125/240

16

THE UNITED STATES

vs.

DAISART SPORTSWEAR INC.,
GEORGE SMITH
IDA SMITH
ALBERT J. DEEB

17

Violation of Title 50 Appx Sec 633 and Title 18 Sec 550 U. S. Code. Unlawfully diverting and aiding & abetting the diversion of cotton & rayon goods obtained with assistance of preference ratings

DATE Month	Day	Year	Defendant	Fined
Dec	3	1947	Daisart Sportswear Inc	$350000—
Dec	3	1947	George Smith	350000—
Dec	3	1947	Albert J. Deeb	5000—

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Mar	31	1947	Filed Information
Mar	31	1947	Filed notice of appearance by Walter R. Hart, Atty for Daisart Sportswear Inc., George Smith and Ida Smith
Apr	3	1947	Daisart Sportswear Inc Pleads Not Guilty by Walter Hart, Atty

Criminal Docket

DATE Month Day Year		
Apr 3 1947	George Smith Pleads Not Guilty) see C 125/239. ordered fingerprinted Bond *J.*	19
Apr 3 1947	Ida Smith Pleads Not Guilty)	
Apr 3 1947	Albert J. Deeb Pleads Not Guilty)	
Jun 25 1947	Filed Transcript of record of proceedings, dated 4/3/47—Filed in C 125/239	
Nov 10 1947	Filed notice of appearance by Morris Siegel as Atty for deft Albert J. Deeb (Filed in C 125/239)	20
Nov 17 1947	Govt moves to dismiss information as to deft Ida Smith. Motion granted. Govt moves to consolidate for trial C 125/239, C 125/240 and C 126/295. Motion granted. For particulars of trial see C 126/295. Ryan *J.* Trial continued 11/18/47, 11/19/47, 11/20/47, 11/21/47, 11/24/47	
Nov 25 1947	Trial continued—Govt moves to dismiss counts 2, 4 to 10 inc., 13 to 21 inc. 25, 26, 33, 34, 35, 38, 39, 40 & 41 as against deft. A. J. Deeb Motion granted Govt moves to dismiss counts 8-15-33-38 as against Defts. Daisart Sportswear Inc. and Geo. Smith Motion Granted. All defts move for judgment of acquittal—denied.	21

	DATE Month	Day	Year	
22	Nov	26	1947	Trial continued
	Nov	28	1947	Trial continued and concluded—Verdict—A. J. Deeb Guilty on counts 12-22-23-29-31 Not guilty on counts 1-3-11-24-27-28-30-32-36-37— Daisart Sportswear Inc & Geo. Smith—Guilty on counts 1 to 7 inc. 9 to 12 inc., 14, 16 to 32 inc., 34 to 37 inc. 40 & 41. Not guilty on counts 13 & 39— All defts move to set aside verdict—Motion denied sentences adjd to 12/3/47. at 2:30 P.M. in Room 506 Bail continued. Ryan *J.*
23				
	Dec	3	1947	Filed Judgment #48877 Daisart Sportswear Inc. Fined $10,000. on each of counts 1 to 7 inclusive, counts 9 to 12 inclusive, count 14, counts 16 to 32 inclusive, counts 34 to 37 inclusive and counts 40 and 41. Total fines $350,000. Sylvester J. Ryan *J.*
	Dec	3	1947	Filed Judgment #48883 George Smith One Year and fined $10,000. on each of counts 1 to 7 inclusive, counts 9 to 12 inclusive, count 14, counts 16 to 32 inclusive, counts 34 to 37 inclusive and counts 40 and 41.
24				Prison sentences on all counts to run concurrently with each other and concurrently with prison sentence on C 126/295. and consecutively to and to begin after service of sentence on information C 125/239. at a place of confinement to be designated by the Attorney General of the United States. Remanded.

Criminal Docket

Month Day Year DATE		
	Total fines $350,000. and to stand committed until fine is paid or he is otherwise discharged according to law Bail pending appeal fixed in sum of $10,000 to cover C 125/239, 240 & C 126/295. Sylvester J. Ryan *J.*	25
Dec 3 1947	Filed ~~Judgment #48880~~ Albert J. Deeb. One Year and fined $1000. on each of counts 12-22-23-29-31. Prison sentences on all counts to run concurrently and concurrently with C 125/239 and C 126/295. at a place of confinement to be designated by the Attorney General of the United States. Remanded. Total fines $5000 and to stand committed until fine is paid or he is otherwise discharged according to law Bail pending appeal fixed in sum of $5000. to cover C 125/239 & 125/240 & C 126/295. Sylvester J. Ryan *J.*	26
Dec 3 1947	Issued commitments & copies as to George Smith and Albert J. Deeb.	27
Dec 4 1947	Filed stipulation that the appeal from judgments of conviction on C 125/239, 240 & C 126/295 be prosecuted as one appeal. So ordered. Ryan *J.*	
Dec 4 1947	Filed Notice of Appeal by Daisaft Sportswear Inc., George Smith and Albert J. Deeb. See C 126/295	

Criminal Docket

	DATE Month	Day	Year	
28	Dec	12	1947	Filed remands for A. J. Deeb & G. Smith 12/3/47. Ryan *J.*
	Jan	10	1948	Filed stipulation and order extending time to file record on appeal etc to and including 2/16/48—So ordered— Clancy *J.*
	Jan	14	1948	Filed stipulation and order changing testimony in the manner specified in stipulation Ryan *J.*
29				
30				

Criminal Docket

Docket C 126/295

31

THE UNITED STATES

vs.

DAISART SPORTSWEAR INC.,
GEORGE SMITH
ALBERT J. DEEB

32

Violation Ti 18 Sec 88 USC
Conspiracy to sell finished piece goods at prices in excess of Maximum price in viol of Maximum price regulation 127 etc

DATE Month	Day	Year	Defendant	Fined
Dec	3	1947	Daisart Sportswear Inc	$10000—
Dec	3	1947	George Smith	10000—
Dec	3	1947	Albert J Deeb	10000—

33

Sep	23	1947	Filed Indictment.
"	29	"	Daisart Sportswear Inc—Pleads Not Guilty by Geo. Smith, Pres.
"	29	"	George Smith—Pleads Not Guilty)
"	29	"	Albert J. Deeb—Pleads Not Guilty)

Bail on C 125/239 & 240 to be rewritten to cover this Indictment—Brennan J.

	DATE Month	Day	Year	
34	Nov	10	1947	Filed notice of appearance by Morris Siegel as Atty for Albert J. Deeb. (Filed in C 125/239).
	Nov	19	1947	Filed Transcript of record of proceedings, dated 9/29/47
	Nov	17	1947	Trial begun as to all defendants before—Ryan *J.*—Defts move to consolidate for trial C 125/239, C 125/240 & C 126/295 Motion granted.
35				Trial continued 11/18/47, 11/19/47, 11/20/47, 11/21/47
	Nov	24	1947	Trial cont'd. Deft Deeb moves for mistrial. Motion denied Defts Daisart Sportswear Inc and Smith move for mistrial Motion denied. Defts move to dismiss Indictment —Decision reserved
	Nov	25	1947	Trial cont'd—Govt rests—All defts move for judgment of acquittal—Motions denied—Defts rest
36				Renew motions made at end of Govts case —Motions denied.
	Nov	26	1947	Trial cont'd.
	Nov	28	1947	Trial cont'd. Defts Daisart Sportswear and Smith—motions for judgment of acquittal denied. Defts Daisart Sportswear Inc & Smith move for mistrial. Motion denied. Verdict—All defts Guilty as charged.

Criminal Docket

DATE Month Day Year		
		37
	Move to set aside verdict. Motion denied. Sentences adjd to Dec 3, 1947 at 2:30 P.M. Rm 506 Bail continued. Ryan J.	
Dec 3 1947	Filed Judgment #48878 Daisart Sportswear Inc. Fined $10,000. Sylvester J. Ryan J.	
Dec 3 1947	Filed Judgment #48884 George Smith Two years to run concurrently with sentence on C 125/240 at a place of confinement to be designated by the Attorney General of the United States and fined $10,000. and to stand committed until fine is paid or he is otherwise discharged according to law	38
	Bail pending appeal fixed at $10,000. to cover C 125/239, 240 & C 126/295 Remanded Sylvester J. Ryan	
Dec 3 1947	Filed Judgment #48881 Albert J. Deeb. One Year and One Day to run concurrently with sentences on C 125/239 & 125/240 at a place of confinement to be designated by the Attorney General of the United States ~~and fined~~ $10,000. and to stand committed until fine is paid or he is otherwise discharged according to law	39
	Bail pending Appeal fixed in sum of $2500 to cover C 125/239, 240 & C 126/295. Remanded Sylvester J. Ryan J.	

Criminal Docket

	DATE Month Day Year		
40	Dec 3 1947	Issued commitments & copies for George Smith and Albert J. Deeb.	
	Dec 4 1947	Filed stipulation that appeals from Judgments of conviction on C 215/239 & 125/ ments of conviction on C 125/239 & 125/ appeal—so ordered—Ryan *J.*	
	Dec 4 1947	Filed Notice of Appeal by Daisart Sportswear Inc, George Smith and Albert J. Deeb— (W.R.H.)	5.00
41	Dec 12 1947	Filed remand dated 12/3/47—(Filed in C 125/239) for Albert J. Deeb.	
	Dec 12 1947	Filed remand dated 12/3/47—Filed in C 125/239) for George Smith Ryan *J.*	
		JAN 16 1948	
		PD. TO U. S. TREASY. $5—	
	Jan 10 1948	Filed stipulation and Order extending time to file record on appeal to and including 2/16/48. So ordered Clancy *J.*	
42	Jan 15 1948	Filed stipulation and order changing testimony in manner specified in said stipulation Ryan *J.*	

Information

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

No.

UNITED STATES OF AMERICA,

—v.—

DAISART SPORTSWEAR, INC., GEORGE SMITH, IDA SMITH and ALBERT J. DEEB.

The United States Attorney charges:

The defendants herein within the Southern District of New York, in respect of the goods ordered, as hereinafter set forth, unlawfully, wilfully and knowingly failed, and unlawfully, wilfully and knowingly aided and abetted in failing to utilize said goods for a use prescribed for goods received, directly or indirectly, in consequence of the application or extension of the preference rating hereinafter described (Section 301, Second War Powers Act, 50 U. S. C. A. App., Section 633; Priorities Regulation No. 1, Priorities Regulation No. 3 and Title 18, Section 550, United States Code).

The foregoing allegation is hereby realleged for each count hereinafter set forth:

Information

Count	Ordered From	Date of Order	Yards Ordered	Goods Ordered	Preference Rating
1	A. Steinam Company, Inc.	12/13/44	50,000	Cotton	AA-2X
2	A. Steinam Company, Inc.	12/15/44	20,000	Cotton	AA-2X
3	A. Steinam Company, Inc.	12/20/44	75,000	Cotton	AA-2X
4	A. Steinam Company, Inc.	1/10/45	25,000	Cotton	AA-2X
5	S. Eisenberg	1/17/45	100,000	Rayon	AA-2X
6	S. Meadtex	1/26/45	30,000	Cotton	AA-2X
7	L. Lazarus	2/ 7/45	50,000	Cotton	AA-1
8	S. Meadtex	2/12/45	25,000	Cotton	AA-2X
9	S. Meadtex	2/12/45	50,000	Cotton	AA-2X
10	S. Meadtex	2/15/45	75,000	Cotton	AA-2X
11	A. Steinam Company, Inc.	2/16/45	50,000	Cotton	AA-2X
12	S. Meadtex	2/20/45	125,000	Cotton	AA-2X
13	Southeastern Cottons, Inc.	2/21/45	100,000	Cotton	AA-2X
14	A. Steinam Company, Inc.	2/23/45	25,000	Cotton	AA-2X
15	S. Meadtex	2/26/45	75,000	Cotton	AA-2X
16	L. Lazarus	2/27/45	100,000	Rayon	AA-2X
17	A. Steinam Company, Inc.	2/28/45	125,000	Cotton	AA-2X
18	S. Meadtex	3/ 7/45	50,000	Cotton	AA-2X
19	S. Meadtex	3/ 8/45	150,000	Cotton	AA-2X
20	L. J. Lazarus	3/10/45	20,000	Rayon	AA-1
21	Regal Equipment Co.	3/21/45	40,000	Cotton	AA-1
22	Fine Goods Sales Associates, Inc.	3/24/45	1,050,000	Cotton	AA-1
23	Marvlo Fabrics, Inc.	3/28/45	280,000	Rayon	AA-1
24	A. Steinam Company, Inc.	4/ 5/45	100,000	Cotton	AA-2X
25	Berger & Sherin, Inc.	4/23/45	200,000	Rayon	AA-2X
26	Berger & Sherin, Inc.	5/ 1/45	100,000	Rayon	AA-2X
27	S. Meadtex	5/14/45	50,000	Cotton	AA-1
28	S. Meadtex	5/23/45	25,000	Cotton	AA-1

Information

Count	Ordered From	Date of Order	Yards Ordered	Goods Ordered	Preference Rating
29	Marvlo Fabrics, Inc.	5/23/45	100,000	Rayon	AA-1
30	A. Steinam Company, Inc.	6/ 7/45	50,000	Cotton	AA-1
31	Fine Goods Sales Associates, Inc.	6/ 8/45	200,000	Cotton	AA-1
32	Berger & Sherin, Inc.	6/11/45	450,000	Rayon	AA-2X
33	A. Steinam Company, Inc.	6/13/45	50,000	Cotton	AA-1
34	S. Meadtex	6/21/45	25,000	Cotton	AA-1
35	S. Meadtex	6/27/45	100,000	Cotton	AA-1
36	S. Meadtex	7/ 2/45	2,000	Cotton	AA-1
37	S. Meadtex	7/ 9/45	60,000	Cotton	AA-1
38	S. Meadtex	7/10/45	10,000	Cotton	AA-1
39	A. Steinam Company, Inc.	7/12/45	2,775	Cotton	AA-3
40	S. Eisenberg	7/20/45	100,000	Cotton	AA-2X
41	S. Meadtex	7/18/45	2,500	Cotton	AA-1

JOHN F. X. MCGOHEY,
United States Attorney.

Information

52

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

No.

UNITED STATES OF AMERICA,

—v.—

DAISART SPORTSWEAR, INC., GEORGE SMITH, IDA SMITH
53 and ALBERT J. DEEB.

The United States Attorney charges:

The defendants herein, within the Southern District of New York, unlawfully, wilfully and knowingly applied and extended, and unlawfully, wilfully and knowingly aided and abetted in the application and extension of the preference rating hereinafter set forth to the order hereinafter described, which preference rating said defendants were not entitled to apply or extend for the materials in said
54 order specified (Section 301, Second War Powers Act, 50 U. S. C. A. App., Section 633; Priorities Regulation No. 1, Priorities Regulation No. 3 and Title 18, Section 550, United States Code).

The foregoing allegation is hereby realleged for each count hereinafter set forth.

Information

Count	Ordered From	Date of Order	Yards Ordered	Goods Ordered	Preference Rating
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2	A. Steinam Company, Inc.	12/15/44	20,000	Cotton	AA-2X
3	A. Steinam Company, Inc.	12/20/44	75,000	Cotton	AA-2X
4	A. Steinam Company, Inc.	1/10/45	25,000	Cotton	AA-2X
5	S. Eisenberg	1/17/45	100,000	Rayon	AA-2X
6	S. Meadtex	1/26/45	30,000	Cotton	AA-2X
7	L. Lazarus	2/ 7/45	50,000	Cotton	AA-1
8	S. Meadtex	2/12/45	25,000	Cotton	AA-2X
9	S. Meadtex	2/12/45	50,000	Cotton	AA-2X
10	S. Meadtex	2/15/45	75,000	Cotton	AA-2X
11	A. Steinam Company, Inc.	2/16/45	50,000	Cotton	AA-2X
12	S. Meadtex	2/20/45	125,000	Cotton	AA-2X
13	Southeastern Cottons, Inc.	2/21/45	100,000	Cotton	AA-2X
14	A. Steinam Company, Inc.	2/23/45	25,000	Cotton	AA-2X
15	S. Meadtex	2/26/45	75,000	Cotton	AA-2X
16	L. Lazarus	2/27/45	100,000	Rayon	AA-2X
17	A. Steinam Company, Inc.	2/28/45	125,000	Cotton	AA-2X
18	S. Meadtex	3/ 7/45	50,000	Cotton	AA-2X
19	S. Meadtex	3/ 8/45	150,000	Cotton	AA-2X
20	L. J. Lazarus	3/10/45	20,000	Rayon	AA-1
21	Regal Equipment Co.	3/21/45	40,000	Cotton	AA-1
22	Fine Goods Sales Associates, Inc.	3/23/45	1,050,000	Cotton	AA-1
23	Marylo Fabrics, Inc.	3/28/45	280,000	Rayon	AA-1
24	A. Steinam Company, Inc.	4/ 5/45	100,000	Cotton	AA-2X
25	Berger & Sherin, Inc.	4/23/45	200,000	Rayon	AA-2X
26	Berger & Sherin, Inc.	5/ 1/45	100,000	Rayon	AA-2X
27	S. Meadtex	5/14/45	50,000	Cotton	AA-1
28	S. Meadtex	5/23/45	25,000	Cotton	AA-1

Information

Count	Ordered From	Date of Order	Yards Ordered	Goods Ordered	Preference Rating
29	Marvlo Fabrics, Inc.	5/23/45	100,000	Rayon	AA-1
30	A. Steinam Company, Inc.	6/ 7/45	50,000	Cotton	AA-1
31	Fine Goods Sales Associates, Inc.	6/ 8/45	200,000	Cotton	AA-1
32	Berger & Sherin, Inc.	6/11/45	150,000	Rayon	AA-2X
33	A. Steinam Company, Inc.	6/13/45	50,000	Cotton	AA-1
34	S. Meadtex	6/21/45	25,000	Cotton	AA-1
35	S. Meadtex	6/27/45	100,000	Cotton	AA-1
36	S. Meadtex	7/ 2/45	2,000	Cotton	AA-1
37	S. Meadtex	7/ 9/45	60,000	Cotton	AA-1
38	S. Meadtex	7/10/45	10,000	Cotton	AA-1
39	A. Steinam Company, Inc.	7/12/45	2,775	Cotton	AA-3
40	S. Eisenberg	7/20/45	100,000	Cotton	AA-2X
41	S. Meadtex	7/18/45	2,500	Cotton	AA-1

JOHN F. X. MCGOHEY,
United States Attorney.

Indictment

TITLE 18, SECTION 88
U. S. CODE

88. (*Criminal Code, Section 37.*) *Conspiring to commit offense against United States.*—If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both. (R.S. Section 5440; May 17, 1879, c. 8, 21 Stat. 4; Mar. 4, 1909, c. 321, Section 37, 35 Stat. 1096.)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

No.

Title 18, Sec. 88, U. S. C.

UNITED STATES OF AMERICA,

—v.—

DAISART SPORTSWEAR, INC., GEORGE SMITH, and ALBERT J. DEEB.

The Grand Jury charges:

64

1. Heretofore and on or about and between December 1, 1944, and March 31, 1947, at the Southern District of New York and within the jurisdiction of this Court, the above-named defendants, Daisart Sportswear, Inc., George Smith and Albert J. Deeb unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with divers other persons whose names are to the Grand Jurors unknown, to commit offenses against the United States, to wit, to violate Title 50, App. Section 901 et seq., United States Code, and the rules and regulations including Maximum Price Regulation No. 127 and the amendments thereto under said statute duly promulgated.

65

2. It was a part of said conspiracy that the defendants would sell, offer to sell, and deliver, in the course of trade and business, finished piece goods at prices in excess of the maximum price established therefor, and would attempt the foregoing.

3. It was further a part of said conspiracy that the defendants would issue and cause to be issued invoices to the purchasers of said goods bearing the names of fictitious

66

sellers.

4. It was further a part of said conspiracy that the defendants would accept from said purchasers in payment for said goods, checks drawn to the order of the said fictitious sellers.

5. It was further a part of said conspiracy that the defendants would cash and cause to be cashed said checks at various check-cashing companies and banks.

6. It was further a part of said conspiracy that the defendants would issue invoices falsely describing and overstating the quantity of said goods. 67

7. It was further a part of said conspiracy that the defendants would fail to keep for inspection by the Office of Price Administration complete and accurate records of each purchase, sale and delivery of said goods.

8. It was further a part of said conspiracy that the defendants would fail to deliver to each purchaser of said goods a contract of sale or an invoice containing a full description of each type, quality and finish of finished piece goods sold. 68

OVERT ACTS

1. In pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, the defendant Albert J. Deeb attended at premises situated at 18 East 31st Street, on or about the dates following:

(a) May 25, 1945
(b) May 26, 1945
(c) June 8, 1945 69
(d) June 9, 1945
(e) June 10, 1945
(f) June 12, 1945
(g) June 13, 1945
(h) June 14, 1945

2. In pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, the

70 defendant Albert J. Deeb attended at premises situated at 320 5th Avenue, on or about the date following:

May 17, 1945

3. In pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, the defendant Albert J. Deeb attended at premises situated at 105 Madison Avenue, on or about the dates following:

(a) April 16, 1945
(b) July 7, 1945
71 (c) July 30, 1945
(d) August 6, 1945
(e) August 7, 1945

4. In pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, the defendant George J. Smith attended at premises situated at 1412 Broadway, on or about the dates following:

(a) March 28, 1945
(b) March 29, 1945
72 (c) April 16, 1945
(d) May 25, 1945

5. In pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, the defendant George J. Smith attended at premises situated at 440 Fourth Avenue, on or about the dates following:

(a) January 26, 1945
(b) February 2, 1945 73
(c) March 7, 1945
(d) May 14, 1945
(e) June 21, 1945
(f) July 2, 1945

6. In pursuance of said conspiracy and to effect the objects thereof, in the Southern District of New York, the defendant George J. Smith attended at premises situated at 40 Worth Street, on or about the dates following:

(a) March 21, 1945 74
(b) June 8, 1945

75

Indictment

76 U.S. DISTRICT COURT

THE UNITED STATES OF AMERICA

vs.

DAISART SPORTSWEAR, INC., GEORGE SMITH and ALBERT J. DEEB.

INDICTMENT

77

Conspiracy to violate Title 50, App., Sec. 901, et seq., U. S. C. A. & rules & regulations including Maximum Price Reg. No. 127, etc.

(Title 18, Sec. 88, U. S. C.)

JOHN F. X. MCGOHEY,
United States Attorney

A True Bill

78

Testimony

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Cr. 125-239
125-240
126-295

[SAME TITLE]

Before:

HON. SYLVESTER J. RYAN, *District Judge,*
and a jury.

New York, November 17, 1947
10.30 o'clock a.m.

Appearances:

JOHN F. X. MCGOHEY, ESQ., *United States Attorney, for the Government;*

SAMUEL RUDYKOFF, ESQ., *Assistant U. S. Attorney, of Counsel.*

WALTER R. HART, ESQ., *Attorney for defendants Daisart Sportswear, Inc., George Smith and Ida Smith.*

MORRIS SIEGEL, ESQ., *Attorney for Defendant Albert J. Deeb.*

(The following proceedings were had in the absence of the panel of jurors):

Mr. Rudykoff: If the Court pleases, I should like at this time with respect to the two informations before your

Honor to move to dismiss as to the defendant Ida Smith,
82 who is the wife of the defendant George Smith.

I assume that there will be no objection.

The Court: You have no objection to that?

Mr. Hart: No objection.

The Court: The motion will be granted then, and the informations filed against Ida Smith are dismissed, the two informations, court dockets C125-239 and C125-240 being dismissed as to the defendant Ida Smith on motion of the Government.

Mr. Rudykoff: At this time I move to consolidate the two informations, which your Honor has just referred to,
83 with the indictment which bears No. C126-295, for the purposes of trial.

The Court: I will hear the defendants on that application.

Mr. Hart: If your Honor pleases, with respect to that application for the consolidation of these two informations and the indictment, we object upon the ground that there is no justification under Rule 13, which is the rule under which the Court may order two or more indictments, or informations, or both, to be tried together.

The rule in question provides that:

84 "The Court may make such an order if the offenses and the defendants, if there is more than one, could have been joined in a single indictment or information."

The attorney for the Government simply stands before your Honor and tells you that there are two informations and an indictment, all of which are before your Honor, but there is nothing in either of the informations, or in the indictment, or all of them combined, which show that the

offenses set forth in each of them could have been joined in a single indictment or information. 85

In order to be joined in a single indictment, or information, the charges may not come under Rule 8, which provides for the joinder of offenses, and it is therein provided:

> "Two or more offenses may be charged in the same indictment, or information, in a separate count for each offense if the offenses charged are felonies or misdemeanors, or both, and are of the same or similar character, or are based on the same act or transaction, or on two or more acts or transactions connected together, or constituting parts of a common scheme or plan." 86

Now, in order for your Honor to make an order consolidating, it must appear somewhere that the facts come within either rule 8 or rule 13. It must appear to your Honor that the charges set forth in the indictment and the information are of the same or similar character, or it must appear that they are based upon the same act or transaction, or it must appear that there are two or more acts or transactions connected together, or constituting part of a common scheme or plan.

A reading of the informations, together with the indictment, does not disclose either or any of those situations. There is nothing in the indictment which alleges that the merchandise allegedly sold in violation of the Maximum Price Regulations is the same merchandise referred to in the two informations. 87

The Court: Isn't that a matter of proof rather than a matter of allegation?

Mr. Hart: I think not, your Honor, for this reason:

Your Honor is called upon to perform a judicial function
88 at this time to make an order, or in order to make the order, and you can't take the viewpoint, "I will make this order and then wait until the proof comes in to see whether I was right or wrong in making the order."

I say this rule means something, or it means nothing, and what I say it means is this: that it must appear to your Honor from the indictment and the informations that it does come within the purview of these rules.

Your Honor can't say, "Well, maybe it will appear that they do, but we will have a situation created then where
89 if it does not appear that they do, and it does appear later in the course of the trial that there was a misjoinder, it might result in a serious situation which would result in a mistrial, or might give rise to a form of double jeopardy on the part of the defendant, in the event he is brought to trial again.

And further I say what this rule means is this: that your Honor must examine the informations and indictments, and you must be satisfied in your own mind that the informations and the indictment could be joined together, or that the defendants could have been indicted and joined in one indictment, and in order to do that you got to find from
90 these informations that the offenses charged are based upon the same transactions.

The Court: Or part of a common scheme or plan.

Mr. Hart: Or part of a common scheme or plan.

The Court: And that it is not prejudicial to the defendants, or the Government.

Mr. Hart: The prejudicial part is this, then: If your Honor thinks even that there is a common scheme or plan, or even that it does come within rule 8, even then you have no discretion as far as ordering a joint trial if a joint trial will prejudice the defendants.

Now, subdivision (b) therein is a safeguard for the defendant in the event that a joinder is ordered by the court under subdivision or rule 8; but I find nothing in the informations which shows part of a common scheme or plan related to both transactions, and I feel and maintain that it should appear on the face of the indictments and informations. 91

The Court: Well, the informations as I read them charge the unlawful use of certain materials, and the indictment alleges the unlawful sale of materials.

Mr. Hart: Yes.

The Court: And, naturally, they could not sell this merchandise at an unlawful price if they were not in possession of it, and it is all part of one general plan or scheme, and I feel that the informations can properly and should properly be combined with the indictment for the purposes of trial. 92

Mr. Hart: Might I, at the risk of being repetitious, point out, your Honor, that the informations charge the unlawful use of certain material and the indictment charges the sale of that material. However, not that particular material, and there is nothing in the indictment which shows—

The Court: It charges the unlawful sale here and the sale of material.

Mr. Hart: Of material, but not that material set forth in the informations. 93

The Court: There was no demand for a bill of particulars served upon the Government as to the type of merchandise set forth in the indictment, is that correct?

Mr. Hart: There is no charge that it is the same.

The Court: Well, I will rule, Mr. Hart, that the informations can be consolidated and should be consolidated for the purposes of the trial.

Mr. Siegel: On behalf of the defendant, Mr. Deeb, I
94 would like to object to the consolidation of the indictment and the informations upon the specific ground that I feel it will tend to prejudice the defendant Mr. Deeb inasmuch as the indictment alleges the sale of finished piecegoods at over-the-ceiling prices.

The information merely alleges that certain materials were diverted, and they allege various orders and the quantities of these materials, but there is nothing in the indictment pointing specifically to any particular time when the goods were diverted under these priorities and were then
95 turned into the open market and sold in excess of ceiling prices.

Now, if we go in on trial here with these informations and this indictment, I feel that there may be a certain amount of confusion created which would unduly prejudice Mr. Deeb in the trial of this case, in that we do not know whether we are definitely trying an OPA violation case of whatever the materials may be, or whether we are trying a case for specific priorities.

The Court: We are trying them on both charges.

Mr. Siegel: In that respect I would like to say—

The Court: Albert J. Deeb is a defendant named in the
96 informations and the indictment.

Mr. Siegel: That is correct. He is named in both.

The Court: My ruling will be the same as to him as to the other defendants.

Mr. Hart: May we have an understanding that a motion made as to one defendant unless it is otherwise stated by counsel for the other, that that motion may be considered made as to both defendants?

The Court: On this particular motion?

Mr. Hart: With respect to all motions.

The Court: I think as the trial proceeds, I would much prefer that each defendant separately state his own objections and make his own motions. I think it might lead to confusion otherwise, as evidence might be admissible as to one defendant and might not be admissible as to the other defendant. 97

Each time you have an objection or motion to make, each counsel will make it separately as the occasion in his judgment arises.

Mr. Hart: May I also for the record say that my motion, your Honor, now not having been granted for consolidation, I move under subdivision (b), or I object under subdivision (b) of rule 8, the basis being prejudice. 98

The Court: Yes.

Mr. Hart: And will your Honor entertain a motion to dismiss the indictment at this time upon the ground that it does not contain facts sufficient to establish an offense against the United States Government?

The Court: You refer now—

Mr. Hart: To the indictment.

The Court: —to the indictment, and the two additional counts, including the informations?

Mr. Hart: I am making my motion, or I am addressing myself now to the indictment. 99

The Court: To the indictment itself?

Mr. Hart: Yes.

The Court: As I have read the indictment, to my mind the charge is a violation of title 50, Section 901, which charges a violation of Maximum Price Regulation 127.

Mr. Hart: May I state the basis of my motion?

The Court: Yes, sir.

Mr. Hart: If your Honor pleases, the indictment charges a conspiracy and violation of the section just mentioned

100 by your Honor, and after the declaratory act, declaring that a conspiracy was entered into between the defendants, the indictment purports to set forth various overt acts committed by each of the defendants.

Overt acts Nos. 1, 2 and 3 relate to the defendant Deeb, and they say that he attended at certain premises, the premises being set forth in each numbered alleged overt act. Overt acts Nos. 4, 5 and 6 relate to the defendant Smith.

I respectfully move to dismiss the indictment upon the ground that the alleged acts set forth in the indictment are

101 not overt acts within the meaning of the law.

The Court: In what respect are they not?

Mr. Hart: In this respect, that the overt act alleged is virtually—take 4, for instance, "That in pursuance of said conspiracy and to effect the objects thereof, the defendant Smith attended at premises 1412 Broadway," on or about such and such dates. It does not say what was at 1412 Broadway, what his purpose was in going there, whether he was located at that address, or anything which would indicate that it was an act in furtherance or in pursuance of said conspiracy.

The Court: Well, I will rule that those are evidentiary

102 facts and need not necessarily be alleged farther in the indictment.

Mr. Hart: I was going to repeat my motion with respect to 5 and 6, and I assume your Honor will still apply the same ruling.

The Court: The same ruling.

Mr. Siegel: I at this time move on behalf of the defendant Albert J. Deeb to dismiss the indictment with respect to the conspiracy charges, upon the ground that the overt acts set forth in counts 1, 2 and 3 of the indictment do not

set forth the acts to any specific degree so as to apprise the defendant of exactly what the overt acts consisted of. 103

The Court: That should have been cured by your application for a bill of particulars. Your motion is denied.

Mr. Siegel: I believe that it is incumbent upon the Government in setting forth the indictment to set it forth with a very great degree of specificness so that a defendant will know exactly what charges he has to meet, and so that he knows what to counteract.

In this particular case there is nothing more than just a bald statement that on a certain date he attended at certain premises. Now, there is nothing to indicate that his attendance at those premises was to commit any unlawful act, and what the unlawful act was that was to be committed. 104

The Court: It is alleged that it was an act by him in furtherance of the conspiracy.

I will deny your motion, counselor.

Any other motions, gentlemen?

Mr. Rudykoff: No motions on behalf of the Government.

Mr. Siegel: I might make a further motion on behalf of the defendant Albert J. Deeb.

The Court: Concerning the indictment or the two informations? 105

Mr. Siegel: No, with respect to the joinder.

The Court: Mr. Hart wanted this question heard in the absence of the jury and the jury are about to enter the courtroom.

Mr. Siegel: I still insist on that. Are you?

Mr. Hart: Certainly I am.

The Court: You do insist on it, don't you?

Mr. Hart: Yes, sir.

Mr. Siegel: I would like to move—

106 The Court: Just a moment. The jury are entering the courtroom.

(At this point the panel of jurors entered the courtroom and the following proceedings took place at the bench outside of the hearing of the jury):

The Court: Note that this has been said not in the hearing of the jury.

Mr. Siegel: I would like to move on behalf of the defendant Albert J. Deeb that the informations and the in-
107 dictment be severed with respect to him and the other defendants upon the ground that I feel that by trying all of these together it may tend to prejudice the defendant, Mr. Deeb.

The Court: I don't think so. They are alleged to be conspirators, and I feel that they should be tried jointly.

Mr. Siegel: How about on the informations which tie them all in?

The Court: I feel that no injustice will be done to any of them by being jointly tried. Proper rulings will be made as evidence is submitted, and proper instructions will be
108 given, and if you have any special instructions, either of you counsel, that you desire to be given to the jury at the conclusion of the case, I would appreciate it if you would submit them to me and we will go over them in accordance with the rules.

Mr. Hart: All right. Thank you, Judge.

(At this point the discussion ended at the bench and the following proceedings were in the hearing of the jury):

(A jury was duly impaneled and sworn.)

The Court: I think we had better select two alternate jurors. Is that satisfactory? 109

Mr. Rudykoff: Satisfactory.

Mr. Hart: Satisfactory.

Mr. Siegel: Yes, sir.

(Two alternate jurors were impaneled and sworn.)

The Court: Counsel, will you please step up a moment so that we can arrange on some method of orderly procedure?

(Discussion at the bench, off the record, outside the hearing of the jury.) 110

The Court: We are about to take a recess until 2 o'clock. At that time counsel will open and outline the evidence the Government expects to present, and we will begin with the taking of testimony from the witnesses.

During recess and at all other times when you are not in court, you are not to discuss the case amongst yourselves, or with anybody else. You are to keep your mind open, free and clear for the reception of that evidence and not come to any conclusion as to the guilt or innocence of any of these defendants until the case is finally submitted to you by the Court. 111

If anyone should approach you and discuss this case with you, or attempt to do so, do not do it, but immediately report it to the Court.

You are excused now until 2 o'clock, at which time you will report to Room 123. That is in the rear of the court, and the attendant will show you that room now.

2 o'clock promptly.

(Recess to 2 o'clock p.m.)

AFTERNOON SESSION

112

Mr. Rudykoff: May I proceed, your Honor?

The Court: Yes.

(Mr. Rudykoff made an opening address to the Court and jury on behalf of the Government.)

(Mr. Hart made an opening address to the Court and jury on behalf of the defendants Daisart Sportswear, Inc. and George Smith.)

113

(Mr. Siegel made an opening address to the Court and jury on behalf of the defendant Albert J. Deeb.)

The Court: All right. Now, you made a motion to exclude witnesses, and it was understood that all witnesses should be excluded.

Mr. Hart: Yes, your Honor.

Mr. Rudykoff: Yes, your Honor.

The Court: I assume that neither side has any witnesses here in court.

Mr. Siegel: The defendant has none in court, your

114 Honor.

Mr. Rudykoff: I cannot say definitely, and I would invite some statement on the part of the Court to be sure.

The Court: If there are any persons in court who have been subpoenaed, or who expect to appear as witnesses in this case, they should leave the courtroom and wait outside subject to call.

Mr. Rudykoff: In the witness room.
The Court: In the witness room. 115
Mr. Rudykoff: That is room 122.
The Court: Room 122.
Mr. Rudykoff: Mr. Rosenquist.

GEORGE V. ROSENQUIST, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

Q. Mr. Rosenquist, will you please keep your voice up 116
so that all the jurors may hear what you have to say. A. Yes.

Q. Are you connected with the Metals Disintegrating Company? A. Yes, sir, I am.

Q. In what capacity? A. As assistant controller.

Q. And is it part of your duties to supervise the records and see that they are kept in proper order? A. Yes, that is true.

Q. And in response to a subpoena did you produce certain records? A. Yes.

Mr. Rudykoff: Would you mark this as one ex- 117
hibit for identification.

(Marked Government's Exhibit 1 for identification.)

Q. I show you Government's Exhibit 1 for ~~identification~~ and ask you if they represent documents which were regularly kept by the company relating to certain transactions had with Daisart Sportswear? A. Yes, they do.

Mr. Rudykoff: I offer these in evidence.

118 Mr. Hart: May I see them, please?

Mr. Rudykoff: Yes, sir (handing). Will you also please mark these papers Government's Exhibit 2 for identification.

Mr. Hart: No objection.

Mr. Siegel: On behalf of the defendant Albert J. Deeb, I will object unless they are in some way connected with the defendant Deeb.

The Court: I have not seen the exhibits. I assume that the Government will connect them, or expects to connect them.

119 Mr. Siegel: Are they taken subject to connection?

Mr. Rudykoff: I will agree to have them taken subject to connection as far as the defendant Deeb is concerned.

The Court: All right. If it would not delay you in the presentation of your evidence, as these are offered in evidence and accepted, I would like to look at them. Would that be convenient to you?

Mr. Rudykoff: That is perfectly all right, your Honor.

The Court: All right.

120

(Government's Exhibit 1 for identification received in evidence.)

(Government's Exhibit 2 marked for identification.)

Mr. Rudykoff: I might suggest this, that I am using this witness purely for the purpose of establishing some formal proof.

The Court: Suppose you proceed.

Mr. Rudykoff: And a subsequent witness will establish the nature of these documents, and that might facilitate the examination. 121

The Court: I will wait until you are through then.

Q. Mr. Rosenquist, I show you Government's Exhibit 2 for identification. Are those documents regularly kept by Metals Disintegrating Company, relating to transactions had with Daisart Sportswear? A. Yes, they are. The photostats, of course, are copies of checks and we could not, of course, release the checks with the copies.

Q. But they are photostats of documents kept by Metals Disintegrating Company in the regular course of its business, is that correct? A. Yes, sir.

Mr. Rudykoff: I offer Government's Exhibit 2 for identification in evidence (handing to Mr. Hart).

Mr. Hart: No objection.

Mr. Siegel: I renew my objection on behalf of the defendant Albert J. Deeb, in that he is not mentioned in the papers, and that they be received subject to connection.

The Court: I will receive them subject to your right to make a motion to strike it out. 123

Mr. Siegel: Unless it is connected; all right.

(Government's Exhibit 2 for identification received in evidence.)

(Government's Exhibit 3 marked for identification.)

124 Q. I show you Government's Exhibit 3 for identification, Mr. Rosenquist, and ask you if they are also records regularly kept by Metals Disintegrating Company, relating to transactions with Daisart Sportswear? A. Yes, they are.

Mr. Rudykoff: I offer Government's Exhibit 3 for identification in evidence. (Hands to Mr. Hart.)

Mr. Hart: No objection.

Mr. Siegel: Again on behalf of the defendant Albert J. Deeb, I object to the introduction of these instruments in evidence unless they are connected with the defendant, Mr. Deeb.

125 The Court: Very well.

Mr. Siegel: I reserve my right to move at the end to strike them out if they are not connected.

The Court: Yes.

(Government's Exhibit 3 for identification received in evidence.)

(Government's Exhibit 4 marked for identification.)

126 Q. Mr. Rosenquist, I show you Government's Exhibit 4 for identification and ask you if those are records duly and regularly kept by the Metals Disintegrating Company relating to transactions with Daisart Sportswear? A. Yes, they are.

Mr. Rudykoff: I offer Government's Exhibit 4 for identification in evidence (handing to Mr. Hart).

Mr. Hart: Are the same type of invoices and checks?

Mr. Rudykoff: Yes.

Mr. Hart: No objection. 127

Mr. Siegel: May I have the same objection on all of these to which Mr. Hart says no objection?

The Court: Yes.

(Government's Exhibit 4 for identification received in evidence.)

The Court: How many similar exhibits have you?

Mr. Rudykoff: I have completed these exhibits which are of the same character. I have just one additional batch to offer, and there may be some 128 things additional.

The Court: All right.

Mr. Rudykoff: Would you mark these for identification, please.

(Marked Government's Exhibit 5 for identification.)

Q. I show you Government's Exhibit 5 for identification, Mr. Rosenquist, and ask you if those are contracts which were being fulfilled during 1944 and 1945, emanating from the War and Navy Departments? A. Yes, they are. 129

The Court: And they are contracts with the Metals Disintegrating Company?

The Witness: That is correct.

Mr. Rudykoff: I offer Government's Exhibit 5 for identification in evidence.

Mr. Hart: I object to it on the ground that it is not binding upon the defendants, or either of them.

Mr. Siegel: I object on behalf of the defendant
130 Albert J. Deeb, on the ground that it is not binding on him.

The Court: They may be received.

(Government's Exhibit 5 for identification received in evidence.)

Q. Mr. Rosenquist, do you have any other contracts between Metals Disintegrating Company and any department of the Government which were unfinished during 1944 and 1945 in your possession? A. I have a contract
131 which is marked "Restricted."

Q. And is that a contract between Metals Disintegrating Company and the Government? A. Yes.

Mr. Hart: I object to the contents of any paper not in evidence being discussed, or any characterization of a paper.

The Court: May I ask before I rule, does that contract concern the defendant Daisart Corporation?

Mr. Rudykoff: It will be established by another witness.

The Court: I will receive it.

132 The Witness: The contract is marked "Restricted."

The Court: You say it is a confidential or restricted contract?

The Witness: Yes, sir.

The Court: I will receive it.

Q. Will you produce it, Mr. Rosenquist?

The Court: If you want to refer to it—

Mr. Rudykoff: I do not know whether we should offer it. 133

Mr. Hart: If the Court please, if any paper is going to be produced or even exhibited which is not going to be received in evidence, I am going to object to it.

The Court: You object at the proper time and I will rule. If it is a confidential contract it might be offered in evidence.

Mr. Rudykoff: I would suggest this, that we mark this for identification at this time and if then connected, that portion of the contract which is relevant I shall offer into evidence. 134

The Court: All right.

Mr. Hart: I object to any paper being marked for identification, which is not offered for identification for the purpose of ultimately being offered in evidence.

The Court: He intends to offer a portion of it in evidence, and it being a confidential contract, I think that he is only admitting such part as the Government will disclose.

Mr. Hart. There may be parts of it that are beneficial to the defendants which are not offered, and I would like to have the opportunity of examining it. 135

The Court: Not if it is a confidential contract.

Mr. Rudykoff: Well, I would suggest this: if there is anything in the contract which is relevant to the case, the practice, as I understand it, is for the Court to examine it.

The Court: And if I feel after an examination

136 of it that there is any portion that should be disclosed to the defendant, I will disclose it.

(Marked Government's Exhibit 6 for identification.)

Mr. Rudykoff: Would you mark that for identification.

(Marked Government's Exhibit 7 for identification.)

137 Q. I show you a subpoena dated October 28, 1947, which is Government's Exhibit 7 for identification, and ask you if the records were produced pursuant to that subpoena? A. There are two contracts shown on here that we did not have.

Q. Well, that is what I am getting at, but first you did produce certain contracts and papers that are described in the subpoena, is that correct? A. Yes, sir.

Q. And the two contracts described in that subpoena, which is Government's Exhibit 7 for identification, were not produced, is that correct? A. Yes.

Q. And were there any such contracts in existence? A.
138 Not to my knowledge.

Q. And did you make a search for those contracts? A. Yes, sir.

Q. Will you state the contracts which were not produced by reference to the description contained in the subpoena? A. The first is Nord 3905 and W-669-QM-26458.

Q. And was a search made of your records for those contracts? A. Yes, sir.

Q. Was any contract of that description, or its equivalent, located? A. No, sir. 139

Q. Now with regard to the various invoices which are part of Government's Exhibits 1, 2, 3, and 4, do they represent all of the invoices and orders relating thereto which relate to business transacted with Daisart Sportswear during 1945 and the latter part of 1944? A. I believe so. We have checked our records pretty thoroughly.

Mr. Rudykoff: Will you please mark that?

(Marked Government's Exhibit 8 for identification.) 140

Q. Now I direct your attention to Government's Exhibit 8 for identification. There are certain initials appearing in the lower lefthand corner, and I believe they are AWF, is that correct? A. Yes, sir.

Q. Do you know whose initials they are? A. I believe those are the initials of A. W. Forrest.

Q. Is that a carbon copy of a letter addressed to Daisart? A. Yes.

Q. And is that part of the company's files, that is, the Metals Disintegrating Company? A. That is true. 141

Mr. Rudykoff: I offer it in evidence.

The Court: There being no objection, it is received.

Mr. Hart: May I see it, please, your Honor?

The Court: Oh, excuse me.

Mr. Hart: Mr. Rudykoff, you are offering a letter, but attached to the letter there is some paper which has not been characterized. I have no objection to the letter going in evidence.

142 Mr. Rudykoff: All right. I will see if I can get some information on the paper.

Q. Mr. Rosenquist, do you know whether this paper was attached to the letter which is marked for identification? A. I believe the pencil paper was probably some written notes before the letter was dictated.

Q. Well, if you don't know—

Mr. Hart: I did not hear that.

(Answer read.)

143 Mr. Rudykoff: I will limit my offer to the letter itself, Government's Exhibit 8 for identification.

The Court: I suggest that you separate it from the letter, or offer the carbon copy.

Mr. Rudykoff: I do not propose to read it at this time, but I should like to keep it attached until we get through with the next witness if that is agreeable.

Mr. Hart: I have no objection, but let the record be clear that all that is being marked in evidence is the letter?

144 Mr. Rudykoff: That is correct.

Mr. Siegel: May I offer an objection on behalf of Mr. Deeb, that it does not refer to him, and unless it is in some way connected with Mr. Deeb, I shall object.

The Court: Received subject to a motion to strike out if it is not connected.

By the Court:

145

Q. This "AWF" you say is Mr. Forrest? A. Yes, sir.

Q. Is it connected with your corporation? A. He was purchasing agent.

Q. Purchasing agent? A. Yes.

(Government's Exhibit 8 for identification received in evidence.)

Mr. Rudykoff: You may inquire.

Cross Examination by Mr. Hart:

146

Q. Mr. Rosenquist, you personally did not place any orders on behalf of the Metals Disintegrating Corporation, did you? A. No, sir.

Q. You personally did not receive any merchandise that was received by them? A. No, sir.

Q. You personally did not approve or pass upon these invoices and check them against deliveries? A. No, sir.

Q. When I say "invoices" I am characterizing now the papers which have been introduced as parts of Exhibits 1 to 4? A. That is correct.

Q. Is that correct? A. Yes, sir.

147

Q. And those are simply invoices, checks, orders and bills which you found in the files of the company, isn't that all? A. Right.

Q. And that is all you can testify to, is that correct? A. (Witness nods his head.)

Q. Do not nod your head. I can't hear you. A. Yes, sir.

The Court: Please speak up louder.

The Witness: I say yes.

Q. You know nothing whatsoever about the facts in these
148 transactions, the deliveries or the activities except what is set forth on those bills which you dug out, or caused to be dug out from your office, is that correct? A. That is correct. They are records of our transactions.

Q. Those are the records which you had dug out, but you are not personally familiar with those? A. That is right.

Q. I mean you are not as an officer familiar with them? A. Yes, that is right.

Mr. Hart: All right. That is all.

149

Cross Examination by Mr. Siegel:

Q. You do not know Mr. Deeb, do you, Mr. Deeb is one of the defendants in this case? A. No, sir.

Q. Never had met him, or had any dealings with him? A. No, sir.

Mr. Siegel: That is all.

By Mr. Hart:

150 Q. Or Mr. Smith, for that matter? A. No, sir.

Mr. Hart: That is all.

Mr. Rudykoff: Thank you, Mr. Rosenquist. Would you please ask Mr. Forrest to come in?

The Witness: Yes, sir.

Albert W. Forrest—for Government—Direct

ALBERT W. FORREST, called as a witness on behalf of the Government, being first duly sworn, testified as follows: 151

Direct Examination by Mr. Rudykoff:

Q. Mr. Forrest, what is your business or occupation? A. At the present time I am in business for myself, in precision tool and cutter manufacturing and grinding.

Q. Located where? A. In Rutherford, New Jersey.

Q. During 1944 and 1945 were you connected with the Metals Disintegrating Company? A. I was.

Q. In what capacity? A. As purchasing agent.

Q. And in that capacity did you have certain transactions 152 with Daisart Sportswear? A. Yes, I did.

Q. And with whom did you deal? A. With Mr. Smith.

Q. Do you see Mr. Smith? A. Yes.

Q. Will you identify him? A. Mr. Smith is sitting there (indicating).

Mr. Hart: Indicating the defendant Smith.

The Court: Indicating the defendant.

Mr. Hart: The defendant Smith.

The Court: Yes, the defendant Smith.

Mr. Hart: Yes. 153

Q. What, if anything, did you purchase from Daisart Sportswear? A. We purchased from Daisart Sportswear material with which to make bags for packing our wartime products of metal powder.

Q. And in requisitioning material did you use written orders? A. Usually, yes, or confirmation of phone orders.

Q. At this time I show you Government's Exhibits 1, 2, 3, 4, and 5, and ask you whether they represent transactions had with Daisart Sportswear Inc., or George Smith?

154 The Court: Let the record show that Exhibit 5 is the contract of the Metals Disintegrating Company with the Army and Navy.

Mr. Hart: Up to 4.

The Court: I thought you referred only to the first four exhibits?

Mr. Rudykoff: Yes. At this time I will confine the questioning to Exhibits 1 to 2 inclusive. Thank you, your Honor.

A. Yes, they do.

155 Q. I direct your attention to Government's Exhibit 8 in evidence and ask you whether you had any talk with George Smith prior to March 8, 1945? A. Yes, I did.

Q. Was your talk in relation to the contents of that letter, which is Government's Exhibit 8 in evidence? A. Yes, sir.

Q. Was that a telephone talk? A. Yes, it was a telephone conversation.

Q. Will you tell us what he said and what you said? A. The gist of the conversation was to the effect that the rating, which was MRO WA-1, was not sufficient, and that we would have to have a better rating for him to secure

156 material for our purposes, or for our use.

Mr. Hart: Now it does not appear who said that.

The Court: No. Who wanted the better rating? Who said it was not sufficient?

The Witness: Mr. Smith.

The Court: What did Mr. Smith say as best you recall, and what did you say?

The Witness: Well, I told Mr. Smith that we were going back and picking up some of the con-

tracts that we were supplying the material on, and furnish him with those ratings, which we did, which I did. 157

Q. Now do you see attached to Government's Exhibit 8 in evidence a yellow sheet? A. Yes.

Q. In whose handwriting is it? A. That is mine.

Q. And was that a memorandum that you made at or about the time of the date of the letter, which is Government's Exhibit 8? A. Yes, sir, it is.

Q. And was that the result of your examination of contracts after and as a result of your conversation with Smith? A. That is correct. 158

Mr. Siegel: If your Honor please, at this time may I have a general objection here on behalf of my client, Mr. Deeb, reserving the right to move to strike out all of this testimony unless he is in some way connected? It seems to be conversations between Mr. Smith and this witness.

The Court: Well, I don't like general objections.

Mr. Siegel: I don't, but at this point there has been no connection at all with Mr. Deeb. I realize that we are all being tried jointly and together. 159

The Court: We will take all of this evidence subject to your right to make a motion to strike it out.

Mr. Siegel: All right.

The Court: Concerning the defendant whom you represent, if it is not connected sufficiently.

Mr. Siegel: All right.

Mr. Rudykoff: Did we get a response to the last question?

(Answer read.)

Q. Did you dictate Government's Exhibit 8? A. Yes, sir.

160 Q. And did you cause it to be sent to Daisart Sportswear? A. I did.

Mr. Rudykoff: At this time I offer the yellow sheet attached to Government's Exhibit 8 in evidence.

Mr. Hart: I object to it upon the ground that there is no proof that we ever received that, or that it was ever sent to us. The witness has said that he made that out at the time that he sent the letter, but there is no proof that we ever received that, whatever or may be.

161

By the Court:

Q. Have you testified concerning this conversation, this telephone conversation that you say you had? A. Yes.

Q. Of your own independent recollection? A. Yes, sir.

Q. And it was not necessary to refresh your memory from any other paper? A. No.

The Court: I will exclude it.

Mr. Rudykoff: Very well, your Honor.

162

By Mr. Rudykoff:

Q. Will you please examine Government's Exhibits 1 to 4 inclusive, and state whether, so far as you recall, there were any other purchases made from Daisart Sportswear Inc. during the latter part of 1944, or at any time during 1945? A. No, I believe that they are all there.

Q. Thank you. Will you please look at Government's Exhibit 8 in evidence and by reference to Government's Ex

hibit 5 in evidence, identify the contracts which are described in Government's Exhibit 8? A. There is one here with the rest of them that I do not seem to tie in with them. 163

Q. Which one is that? A. This one right here (indicating).

Q. What is the contract number? A. NORD 8074.

Q. And is that the first item listed on Government's Exhibit 8? A. It is in that group.

Q. NORD 8074? A. Yes.

By the Court:

Q. NORD stands for what, Naval Ordnance? A. Yes, sir. 164

Q. Naval Ordnance Contract 8074? A. That is right.

Mr. Hart: It is not the first one; it is the last one, in due point of time.

By Mr. Rudykoff:

Q. I direct your attention to Government's Exhibit 6 for identification. Would you examine those and see if any of those bear on Government's Exhibit 8? A. Yes, they do, all of 3903.

Q. You pointed to NORD 3903? A. Yes, sir. 165

Q. What other, if any other contracts, are in Government's Exhibit 6 for identification? A. Well, this appears to be all on NORD 3903, nothing else.

Q. Now, NORD 3903 and NORD 8074 are the contracts described in the first paragraph which enumerates the contracts, is that correct? A. That is right. These are all contracts, every one of them.

Q. Now, WA-1, allotment number 15. Does that refer to a contract or— A. No, this is AA-1.

Q. That is the rating? A. Yes.

166 Q. I see. A. And J5, authorization 3539, would refer to a specific contract.

Q. And is that a contract, as far as you know, which was completed before you left Metals Disintegrating Company? A. Yes.

Q. And is the same true as to the other described contracts? A. Yes, they were all completed before I left Metals Disintegrating Company.

Mr. Hart: All completed when? I can't hear.

167 The Court: He said they were all completed before he left Metals Disintegrating Company.

Q. Now did you at any time send any communication to George Smith, or Daisart Sportswear Inc., relating to priorities other than Government's Exhibit 8 before you? A. No, except as to the purchase orders themselves. Some of those had MROWA-1 rating, and those ratings were not sufficient.

Q. And those appear in the orders themselves, is that correct? A. Yes, sir.

Q. When did you leave Metals Disintegrating? A. Sep-

168 tember 18th of this year.

Q. When approximately was the last purchase made from Daisart Sportswear, as far as you recall? A. Oh, in May or June, 1945.

Q. Now Government's Exhibit 6 for identification, does that relate to a particular type of work? A. Would you mind repeating that?

Q. Does Government's Exhibit 6 for identification relate to a particular type of work? A. Yes, it does.

Q. And with respect to what matter did it relate generally, without going into any detail?

Mr. Hart: I object, if the Court please, referring to a paper that is not in evidence. 169

The Court: Well, I intend to examine that paper at the completion of the testimony of this witness on direct examination, and if there are any portions of it that I feel in the interest of justice should be disclosed to counsel, I will see that it is disclosed. At the present time the objection is overruled.

Mr. Rudykoff: May I withdraw that question and ask one question in place of it at this time?

The Court: Yes.

170

Q. Is Government's Exhibit 6 for identification described in Government's Exhibit 8. A. Yes.

Q. And that is one of the contracts which is described, is that correct? A. Yes, sir.

Q. Now as to Government's Exhibit 6, will you tell us generally without being specific, to what it relates, what type of work? A. It relates to aluminum powder or aluminum grain, as it is sometimes called.

Q. And used for what? A. For war purposes.

Q. What war purposes? A. As specified here by the Navy Department Bureau of Ordnance contract or order.

171

Mr. Rudykoff: You may inquire.

The Court: I would just like to ask a question.

Mr. Rudykoff: Yes, sir.

By the Court:

Q. Just what was the nature of the work done by this Daisart Corporation, Daisart Sportswear Corporation, with your company? A. Daisart Sportswear furnished bags

172 which were used in bag houses, and also used in packing and shipping out magnesium powder.

Q. They delivered to you the manufactured bags? A. Yes, sir.

Cross Examination by Mr. Hart:

Q. I believe, Mr. Forrest, when Mr. Rudykoff questioned you as to—

The Court: I think at this time—

Mr. Hart: You will take a recess?

173 The Court: Yes, the Court will take a recess for five minutes.

Mr. Hart: All right. Will your Honor please make that ten minutes?

The Court: Ten minutes.

(Short recess.)

Q. Mr. Forrest, I believe in answer to Mr. Rudykoff's question as to what the relationship was between you or your company and Daisart, you said they purchased materials with which to make bags, is that correct? A. Yes, sir,

174 that is correct.

Q. And Daisart sold material to you, did they not? A. Yes, sir.

Q. I mean in addition to the bags? A. No, I don't think so.

Q. Pardon me? A. No.

Q. You don't think so? A. No, sir.

Q. Well, is your recollection clear on that, Mr. Forrest? A. (No answer.)

Q. Is your recollection clear on that? A. No, I wouldn't say it is, but I would say that to the best of my recollection I don't recall buying material from Daisart. 175

Q. Well, have you looked through Exhibits 1, 2, 3 and 4? A. I would like to look at them again.

By the Court:

Q. Don't you know without looking at these exhibits whether you bought material from this company or not, or whether it was all delivered in manufactured form? A. I would say it was all delivered in manufactured form, sir. 176

Q. That is your best recollection? A. Yes, sir.

By Mr. Hart:

Q. You are not positive about that, though, are you? A. I think so.

Q. You think what? That you are positive? A. I am quite positive that all of this material was delivered to us in the form of bags.

Q. You did not give an order each time you wanted bags manufactured, did you, in advance? A. Yes, I believe we did. 177

Q. Well, isn't it a fact that you answered Mr. Rudykoff's question by saying, "We usually gave written orders or confirmations"— A. Yes, sir.

Q. —"of phone orders"? A. That is correct.

Q. Of course during the war there were periods of time when there was the urgent necessity for getting the bags out, isn't that so? A. Yes, sir, there was.

178 Q. And it depended upon the turn of the tide, so to speak, isn't that right? A. Yes.

Q. Do you recall the invasion of Normandy? A. Yes.

Q. And the slackening off because of the belief that the war would soon be over? A. Well, I don't know about the slackening off because of the belief that the war would soon be over, but I do recall that there was a slackening off on bag material.

Q. Yes, the slackening off on orders, isn't that so? A. That is right.

179 Q. And, of course, at that time you couldn't foresee that the Battle of the Bulge would take place, which would indicate a prolonged war, isn't that so? A. That is correct.

Q. Tell us what the situation was after the battle of the bulge, or during the battle of the bulge, with reference to orders placed by your concern? A. Well, they would be on the normal or usual amount of purchases.

Q. Well, you say the usual or normal amount of purchases, but between the invasion of Normandy and the Battle of the Bulge there was less than the normal or less than the usual isn't that so? A. Well, in my mind I would not remember that.

180 Q. Mr. Forrest, you just said that after the invasion of Normandy there was a slackening in the orders for bags, is that right? A. Yes, sir, that is probably correct.

Q. When you say a slackening, do you mean that it was below normal? A. Well, some of those orders were beginning to be filled up, and some of them I think were beginning to be completed, and we were not buying additional bags to start with.

Q. There were no new orders coming in between the invasion of Normandy, or very few orders coming in? A. Let us say very few orders.

Q. Then after the Battle of the Bulge, the orders started to come in, isn't that right? A. Probably so. 181

Q. And then you started ordering bags from Smith by telephone, isn't that so? A. Yes, that is true.

Q. The Government was telling you to hurry up and you were telling Smith to hurry up, isn't that right? A. That is correct.

The Court: Well, when you placed an order by telephone, did you always follow it up by written confirmation?

Mr. Hart: I object to that. 182

The Witness: Usually, yes, sir.

Mr. Hart: All right. I withdraw my objection.

Q. You say "usually." Things were in a pretty hectic state, were they not, as the war progressed? A. Well, it certainly was.

Q. And at the time you told Smith to hurry up, he had to have material on hand to manufacture the bags in order to get the bags to you in the time required? A. Yes, that is true.

Q. There was no way of your knowing how many bags you were going to need, and no way of Smith knowing how many yards of material he had to have insofar as future orders were concerned, from your concern, isn't that so? 183

Mr. Rudykoff: That is objected to as immaterial.

Mr. Hart: It is very material, because he had to have the material if the orders were going to be placed.

Mr. Rudykoff: He is only concerned with orders received, not with orders anticipated.

The Court: I will rule that it is not material.

184 Q. Let me ask you this, Mr. Forrest: Did you open up the transactions between your company and Smith? A. No, sir.

Q. Who originated those transactions on behalf of the Metals Disintegrating Company? A. Well, after the—after the first order or so was placed, I handled the transactions.

Q. And who handled them prior to you? A. Mr. Arthur W. Hall at Verona.

Q. You had a plant? A. I believe that is correct.

Q. You had a plant at Verona, did you not, as well as in
185 Elizabeth? A. That is true.

Q. And at that time you knew that Smith had a small establishment in which he employed about eight or ten people, isn't that so? A. At that time I did not know how many people Mr. Smith employed.

Q. Did you visit his plant at a later date? A. I did.

Q. How much later? A. Well, I would say some months later.

Q. I see. A. We had a special job that we had rush, rush on, and I took the job to Mr. Smith's establishment.

Q. Who put the rush, rush, on the job, you or the Government? A. Our production department, because they had
186 to have the material, these bags, in order to produce the material for the Government contracts.

Q. And then when you got the rush, rush order on the contract, you would give the rush, rush order to Mr. Smith, isn't that right? A. That is right.

Q. Either personally or by mail, or by phone? A. Yes, sir.

Q. And in order to comply with the rush, rush, did you not have to have the material on hand to fill the order-

that might come in? Isn't that a fact? A. I don't think I believe that we had to have material on hand. 187

Q. But you took that for granted? A. We took it for granted possibly.

Q. Now, did Mr. Smith have any way of knowing from you in advance how many bags you were going to order, or how much material it was necessary for him to have on hand? A. No, except as to his best amount of material that he supplied to us. That is the only thing that he had to go on.

Q. Yes. And the past is no indication of the future as far as your orders were concerned, isn't that so? 188

Mr. Rudykoff: That is objected to.

The Court: Objection overruled.

Q. The Court has ruled and you may answer. Will you answer the question. A. (No answer.)

Mr. Hart: I will withdraw the question to save time.

Q. The Government did not uniformly place orders with you for so many bags per day, did they? A. No, but we were running to full capacity. 189

Q. You were running to full capacity? A. So that our requirements for bags probably would not greatly exceed what had been furnished to us in the past.

The Court: When you ordered bags from the defendant did you order a certain amount of bags?

The Witness: That was usually the case, yes.

The Court: What quantities as a rule?

The Witness: Oh, anywheres from perhaps 50 bags to 4000 bags.

190 Q. How many thousand? A. 4000 possibly at a time.

The Court: Were they ordered by number, such and such a quantity?

The Witness: Yes, sir.

Q. You say usually, in your answer? A. Usually, yes.

Q. And sometimes you would say "Get up as many bags as you can. We have got a rush, rush order." Isn't that so? A. (No answer.)

Q. Isn't that the fact? A. No.

Q. But you used the word "usually." Now, are you using
191 it in the same sense as everybody else uses it? A. Yes.

Q. And when you said in answer to his Honor's question that you would usually order a set amount of bags, that means that there were times when you did not order such amounts, but told them to turn out bags as quickly as possible? A. That is correct.

Mr. Rudykoff: I object to what that means.

The Court: He has answered. He said "That is correct."

Q. That is correct? A. That is correct.

192 Q. When you say you were working to full capacity, you were not working to full capacity after the invasion of Normandy; it was slackening? A. Those would be cleaning up days.

Q. Whether they were cleaning up days or cleaning down days, there was a slackening, wasn't there? A. Yes.

Q. How much a time elapsed between the invasion of Normandy and the Battle of the Bulge? A. I don't recall that.

Q. But there was a slackening during that period? A. Yes. 193

Q. Then you say at the time of the Battle of the Bulge the rush, rush orders came in? A. That is right.

Q. And they came in in large numbers? A. No, not in large numbers, no.

Q. I believe you said before that these were excitable and hectic days, and you got on the phone and called up Smith? A. I might just say from the time of the slow period to the full production there was not a great deal of difference, but there was some difference, it is true, but not a great deal. In other words we were still in production and we still had some contracts, a number of contracts to 194 complete, and we were working on those contracts.

Q. But the rush was taken off, it that right? A. Well, I think that the pressure was undoubtedly off.

Q. The pressure was? A. Yes.

Q. But the pressure was put on again when the Germans broke through— A. Yes.

Q. At the Battle of the Bulge? A. Yes, sir.

Q. Now, a General by the name of Patton came along and he broke up the Battle of the Bulge, isn't that right? A. That is what they tell me.

Q. And there was a slackening of orders for bags? A. 195 Yes.

Q. So that the number of bags ordered depended upon the breaks and vicissitudes of the war, isn't that so? A. That is correct, very true.

Q. And you did not know in advance, did you, which way it was going, or just what orders were coming in, did you? A. No, sir.

Q. How many people were making bags for you, not people, but how many concerns, individuals, partnerships,

196 or otherwise, were making bags for you in addition to Daisart? A. One.

Q. Who was that? A. A. Siegel in Elizabeth, New Jersey.

Q. Well, was there someone making bags for you in your plant at Verona?

Mr. Rudykoff: That is objected to as immaterial.
The Court: I will receive it.

A. That is right, there were three, yes, sir.

Q. Three? A. Three, yes.

197 Q. I thought you said one, and you mentioned somebody in Elizabeth. I did not get the second one. A. Siegel.

Q. Who was the one in Elizabeth? A. Siegel is the one in Elizabeth.

Q. Who is the second one? A. The second one I should have mentioned is the one at Verona.

Q. Who is the third one? A. That would be Siegel. In other words, Smith.

Q. I see. Including Smith, it is three? A. Yes, sir.

Q. Do you know where this woman who made the bags in Verona got her material from?

Mr. Rudykoff: Objected to as immaterial.

198 The Court: I think it is material.

Mr. Hart: I will connect that if the Court please.

The Court: I will allow it then.

Q. I will put it this way: Don't you know that the woman who made the bags in your plant in Verona got the material from Daisart? A: Hmm, hmm.

Q. "Hmm, hmm," what does that mean? A. Yes, that is correct.

Q. Who paid for that material? A. Metals—

Mr. Rudykoff: That is objected to as immaterial.

Mr. Hart: If the Court pleases, they said they never purchased anything except the completed material, and I want to show they purchased war material, or purchased the unfinished material. 199

The Court: I will allow it.

Q. Who paid for it? A. Metals Disintegrating Company.

Q. Now does that refresh your recollection at least in that instance, that the Metals purchased material and not bags from Daisart? A. Yes, sir, it does. 200

By the Court:

Q. This woman in Verona, did she work in your plant? A. Yes, sir.

Q. And she was a paid employee of your plant? A. (No answer.)

Mr. Hart: Judge, I prefer the questions being asked in interrogatory form.

The Witness: She was working in the plant.

By Mr. Hart: 201

Q. She was a contractor? A. Then she was married, and then we had the deal with her of making up these bags, and I had slipped up on that. I had forgotten about that.

The Court: First she worked for your company and then later worked as an independent contractor for your company?

The Witness: That is correct.

202 Mr. Hart: I did not get that. That is referring to the woman. I apologize. That is why I thought I would not prefer to have the answer.

The Court: Yes.

Q. You looked through a lot of papers on the witness stand which were handed to you by Mr. Rudykoff and identified as Government Exhibit 124. When had you seen those papers last? A. Quite some time ago.

Q. "Quite some time ago" is not definite enough for me to understand, and I don't think the jury understands it. A. Oh, I would say perhaps two years ago.

203 Q. Well, were you down here, or did you speak to Mr. Rudykoff in the last two years? A. Yes, sir.

Q. When was that? A. Perhaps two weeks ago, a week ago, ten days ago.

Q. And two weeks ago did you discuss the case with Mr. Rudykoff? A. No, I did not, as far as—

Q. You answered the question.

Mr. Rudykoff: I object. He has not completed his answer.

Mr. Hart: If the witness has not completed his answer I will let him complete it.

204 A. In my conversation with Mr. Rudykoff I did not see these exhibits,—

Q. Now, Mr. Witness— A. —that you are showing me here.

Q. I am trying to speak plain, understandable English. I ask you did you discuss this case with Mr. Rudykoff? A. No sir.

Q. You say you did not? A. No sir.

Q. How many times were you down to see Mr. Rudykoff? A. Once.

Q. How long were you with Mr. Rudykoff? A. Ten minutes, fifteen minutes perhaps. 205

Q. And you did not discuss the case with him? A. No sir, I did not.

Q. Did you talk about the weather, or something? A. No.

Q. Not one word was talked about this case in the conversation between you and Mr. Rudykoff? A. No sir, not as far as the merits of this case are concerned. He asked me some questions, did I know Mr. Smith, and also the Daisart Manufacturing Company and I told them yes.

Q. Then you did discuss the case, did you not? A. That part and to that extent. 206

Q. Did you understand my question before, Mr. Forrest? A. Perhaps not. You might restate it.

Q. My question was a simple one. Did you discuss this case with Mr. Rudykoff? A. No.

Mr. Rudykoff: I object to the characterization of counsel's questions. He can put his questions without characterizing them.

The Court: The witness said no.

Q. You still say no, you did not discuss the case? A. I did not discuss the merits of the case with Mr. Rudykoff. 207

Q. I did not ask you about the merits. Did you discuss any phase of this case with Mr. Rudykoff? A. (No answer.)

The Court: Did you talk about the facts in this case and the transactions of your company with the Daisart Company and about these orders?

The Witness: Yes sir, we did.

The Court: That is what counsel wants to know.

208 The Witness: Yes sir.

Q. You testified before that you did not know of any occasions when these shirts were purchased by Metals Disintegrating Company? Is that the name? A. That is right.

Q. I show you this sheet, which is attached or which is part of Exhibit 3. Does that change your testimony or your recollection? A. Yes, it changes my recollection that we bought this material probably for shipment to Verona to be worked on there.

209 Q. Does this cause you to change your answer that you never bought these goods? A. Yes sir.

Q. All right. A. It does.

Q. This shows, does it not, that you bought 2,000 yards of cloth? A. Correct.

Q. Not completed bags? A. No, not completed bags.

Q. I just pick another one out from Government's Exhibit 4. Does this refresh your recollection as to whether or not you purchased materials and not completed bags from Daisart? A. Yes, it does.

Q. How many yards does that slip show that you purchased? A. 3,742 yards.

210 Q. 3,742 yards? A. That is right.

Q. Now, when you looked over these exhibits in order to answer the questions of Mr. Rudykoff, didn't you see these two bills that I have shown you? A. No, I did not pay particular attention to them. I was looking for the continuity of the purchase order.

Q. Well, weren't you looking at the substance of the purchase orders? A. Not particularly.

Q. Well, in looking at the continuity, do you see that your recollection was sufficiently refreshed by looking at

these exhibits to determine positively in your mind that there are not or were not other shipments or orders than those which are in here? A. I would say to the best of my recollection they seem to run fairly consecutively. 211

Q. And that is the best you can say, isn't it? A. That is right.

Q. To the best of your recollection? A. Yes.

Q. You are not in a position to swear positively that this list of exhibits— A. No, this material that you have on your desk, I would not swear that that is all.

Q. That is right. A. Or I would not swear that there might be something else in there that I have not seen.

Q. How long ago is it, Mr. Forrest, that you have been with Metals? A. Oh, a short time. 2

Q. And at that time, or during that time I assume as purchasing agent you had quite a lot of duties to perform? A. Yes sir.

Q. How many men were employed by Metals? A. Well, that number varied anywhere from 100 to perhaps 250 people.

Q. And what do their purchases run into in dollars and cents? A. That I can't tell you. Perhaps I might say quite a bit of money.

Q. What did the purchase of bags run into? A. Would you like an estimate? 213

Q. Well, yes. A. Seven or 8,000 bags and materials.

Q. Pardon? A. Bags and material.

The Court: Seven or 8,000 what?

The Witness: Seven or eight thousand dollars.

Q. And that is an estimate that you would be willing to state? A. That is an estimate.

Q. Just an estimate? A. Yes, sir.

Q. And did you personally receive each shipment that
214 came in? A. No sir.

Q. When you placed the telephone order did you personally check to see whether or not the material ordered came in? A. No sir.

Q. Particularly when you called up Smith and said, "Make more bags", without a specific quantity, there was no way of your checking up what he sent in, was there? A. No, because we would have a receiving department that would account for those bags delivered, and those reports were sent in to the purchasing department for verification.

Q. You said that the last order was given in May or
215 June of 1946; is that correct? A. It could be correct. I don't recall those dates.

Q. Well, can you state positively when the last order was given by you? A. No sir, I cannot.

Q. What do you think the total of those bills is that you produced in court here?

Mr. Rudykoff: That is objected to. They speak for themselves.

Q. Do you know?

216 The Court: They speak for themselves.

Mr. Hart: It is cross examination, if the Court pleases.

The Court: If he is in a position to tell us he can tell us and refresh his recollection if he is able to say.

A. Well, the figure that I have already stated.

Q. And that is about $7,000; is that right? A. Possibly

Q. Do you know that some of these bills alone are $2,000 or $3,000 apiece? 217

Mr. Rudykoff: That, of course, is immaterial.

The Court: The bills will speak for themselves.

Mr. Rudykoff: They speak for themselves, and the total may still be six or seven thousand dollars.

Mr. Hart: Well, the total isn't.

Mr. Rudykoff: That I don't know.

The Court: Gentlemen, we do not want to get into any argument.

Q. You are not in any position to state of your own personal knowledge, either, that Smith did not deliver all of the bags that were ordered from him? A. That he did not deliver all of the bags that were ordered? 218

Q. Yes. A. No, I would not say so.

Q. You would not say that he did not? A. No.

Q. You are in no position to state just how many bags you did order, either by telephone or by written order, in round numbers, or by telephone in the "Rush, rush, get out as quickly as possible"? A. No, I am in no position to state.

Q. And you are not in any position to state as to how many were delivered, of your own personal knowledge? 219 A. Nothing except as those indicated by the bills and by those orders.

Q. And the answer to the question as to how many were delivered is then based on your presupposing that these were all delivered? A. That is correct.

Q. But you don't know of your own knowledge? A. No sir.

Mr. Hart: That is all.

By Mr. Siegel:

220

Q. Mr. Forrest, you do not know the defendant Mr Deeb, in this case, do you? A. No sir.

Q. You never had any dealings with him of any kind or nature? A. No sir.

Mr. Siegel: That is all.

Redirect Examination by Mr. Rudykoff:

Q. Mr. Forrest, who was in charge of the plant operations? A. Mr. John Noel.

221

Q. Is he an engineer? A. Yes sir.

Q. And were most of these bags ordered by you pursuant to requests filed by him from time to time? A. No, they would be partially through him and partially through men under him, or under the influence of the plant supervisors under Mr. Noel.

Q. With regard to payments, how did the company pay its bills? By check or cash? A. By check. Everything was paid by check.

Q. There were not any cash payments made to Mr Smith— A. No sir.

222

Q. —or Daisart? A. None at all.

Q. And whatever material was ordered, which is set forth and described in these bills, invoices and vouchers, those are the materials that were ordered by the company?

Mr. Hart: I object to that. That is for the jury to decide.

Mr. Rudykoff: I will withdraw it. That is all.

By the Court:

223

Q. You say that at times you received materials which had not been manufactured? A. Yes sir. Now that I have seen these, or inspected these invoices closely, I realize that I was in error.

Q. Was that material delivered to your company pursuant to orders or requisitions? A. Yes sir.

Q. So that whether the product was manufactured or orders had come to your in the way of raw materials, there was always a requisition or order sent by your company to Daisart?

224

Mr. Hart: If the Court please, I object to that. This witness has testified to just the opposite. He has testified that he telephoned, without sending any orders or without specific requisitions.

The Court: The objection is overruled.

Q. You may answer the question, Mr. Forrest. A. That was usually the case; perhaps not in all cases, it is true, but it was—our intention was to cover every purchase by a written order, and we did the best to cover it. That was our policy.

225

The Court: All right.

By Mr. Rudykoff:

Q. Now, in the case of the materials received from Daisart, were they ultimately used to make bags? A. Yes sir.

Q. Except that they were made by one or other of the two persons you have mentioned? A. The material that

was received from Daisart was made up by this woman
226 who used to be an employee of the company, and then was making them up under a contract of her own.

Mr. Rudykoff: Thank you.

Recross Examination by Mr. Hart:

Q. Now I will have to ask you this question again, in order to clarify something that you testified to in answer to the Court. You have testified, have you not, repeatedly, under cross examination, that there were times when the government in a "Rush-Rush" order, and you would call up Smith or Daisart and say to them, "Get out as many
227 bags as you can. We need them in a hurry"? A. I don't ever recall saying to Mr. Smith, "Make up as many bags as you can as we need them in a hurry." Perhaps I did.

Q. Mr. Forrest— A. But I don't recall.

Q. Didn't you say ~~on~~ cross examination— A. But I will say—

Q. Now, please, didn't you say on cross examination—

The Court: Now just a moment. Let him answer.

A. To call Mr. Smith and say, "Now, look, we need some bags. You better get busy on them", and then we would
228 send him a confirmation of that phone conversation.

Q. But, as you said before, the rush was so great that there may have been times when confirmations did not go in; isn't that right? A. That is quite possible.

Mr. Hart: That is all.

Redirect Examination by Mr. Rudykoff:

Q. But do you know of any case where you did not send in a confirmation? A. I do not know of any specific case where we did not send in a confirmation.

By Mr. Hart: 229

Q. And you don't know that in every case you did send him a confirmation; is that so? A. That is also true.

By the Court:

Q. You did not make any payment on those orders which you would give for materials or bags to be delivered to your company without a requisition or order being filled out? A. I don't believe we did.

Mr. Hart: I move to strike that out on the ground that it calls for a yes or no answer. 230

Q. You say you don't believe? A. Well, that is my best recollection.

Q. Is that your best recollection? A. That is my best recollection, that all those orders, each of the phone orders or written orders, were later confirmed for purposes of the record. Now it is possible that there might have been an order that could have got through. However, it would have to be approved all along the line for payment, and we did not make a policy of just paying open orders, or open bills, as it were. 231

By Mr. Hart:

Q. Mr. Forrest, whatever was your policy, or whatever was not your policy, you had nothing whatsoever to do with the checking of the confirmations or the payment of the bills, did you? A. Yes sir, I did.

Q. Did you check them? A. I did. I approved every bill.

Q. I see. A. For payment.

232 Q. You approved every bill for payment? A. That's right.

Q. But you don't know whether or not there was a bill or an order previously given for a certain shipment? A. Yes, I would usually know that.

Q. You would usually know it? A. Yes.

Q. But this set of answers that you gave before, that there were times when orders were given verbally. A. Perhaps it would be a verbal order.

Q. Yes. A. It could be a verbal order.

Q. Pardon me? A. It could be a verbal order.

233 Q. Just one other question. Didn't Mr. Hall in the Verona plant give out orders for bags and materials? A. Yes sir.

Q. While you were there? A. Yes sir.

Q. In other words, he started the transactions with Smith? The first transaction that Daisart had with your company was through Mr. Hall? A. I believe that is correct, and I think the records there would probably indicate that.

Q. Yes. And what is Hall's capacity, or what was his position? A. At that particular time he was assisting the plant superintendent at Verona.

234 Q. Was he a purchasing agent? A. No, I was the plant purchasing agent.

Q. Well, did he have— A. Let us call him an assistant purchasing agent.

Q. An assistant purchasing agent? A. Yes.

Q. He was the assistant purchasing agent, and he did make purchases, did he not? A. Yes sir, he did.

Q. On his own? A. On his own.

Q. Without consulting you? A. Yes, he had authority to do it, and it worked out very well.

Mr. Hart: That is all. 235

By Mr. Rudykoff:

Q. Regardless of the source of the orders eventually a check was made out; is that correct? A. Yes sir.

Q. And before that check was sent out and signed it was in some way approved by you? A. Yes sir.

Q. So that there is a record of every transaction on the books of the company? A. Yes sir.

Mr. Hart: If the Court please, I object to Mr. Rudykoff testifying unless he takes the stand. I 236
object to him leading the witness and saying "There was" and "there was". It might be more dignified to say, or to say, "Was there?"

The Court: He will observe your admonition.

Mr. Rudykoff: I will observe it.

Mr. Hart: All right.

Q. Was there a record of every transaction on the books of the company in some manner, shape or form? A. Yes, there was an order book.

Q. Was there any exception to that rule, so far as you know? A. There was no exception to that rule. Every 237
thing was paid by check.

Mr. Rudykoff: That is all.

By Mr. Hart:

Q. Did you ever examine the books of the corporation to see what records were on the books? A. Of my corporation?

Q. No, not of your present corporation. I believe you
238 have a precision tool company now? A. Yes sir.

Q. No. I am talking now of the Metals? A. Well, I did know something about it, yes.

Q. But you never examined the books to see whether every transaction was recorded, did you? A. The only time would be when I would be an accountant of that corporation and I had access to all those figures, and I did go over the books.

Q. Did you examine the books to see that every transaction was recorded? A. Yes.

Q. And at the time you examined them did you recall all the oral orders you had given? A. No.
239

Q. You could not recall? A. I would not.

Q. So you would not know whether the oral orders you had given were recorded in the books or not, would you? A. No, but all oral orders would be paid for by check. In other words, there are no orders that have been issued or monies paid except by check.

Q. Did there come a time when there was a slackening and you called up Daisart, you or Mr. Hall called up Daisart and told them to stop manufacturing, as you did not need any more bags? A. I don't recall that.

Q. Well, you know that the relationship ended somewhere? A. Yes.
240

Q. They stopped manufacturing? A. That is right.

Q. And there came a time when you did not need any more bags? A. Yes sir; that is correct.

Q. And did you call up Daisart and tell them you did not need any more? A. No sir, I did not.

Q. What is that? A. No.

Q. How did they happen to stop, if you know? A. Well, I imagine at the end of the war they were probably stopped anyway.

Q. The war ended with Japan when?

241

Mr. Rudykoff: That is objected to.

The Court: They stopped, did they, when they did not get any more orders?

The Witness: Yes.

Q. And you don't recall when the last application was made, do you? A. No, I don't recall that definitely.

Mr. Hart: All right.

Mr. Rudykoff: All right, sir. Thank you.

242

(Witness excused.)

The Court: Next witness.

Mr. Rudykoff: May I approach the bench?

The Court: Yes.

(Discussion of Court and counsel at the bench.)

LEON ADJMI, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

243

Q. Mr. Adjmi, will you speak up so that all of the jurors can hear you? A. Yes, sir.

Q. What is your business? A. Well, I used to be in the manufacturing business, sir.

Q. What was your business in 1945? A. We were manufacturers.

Q. And were you in that business during May of 1945?

A. Yes, sir.

Q. Where are you located now? A. I am located at 289
244 Washington Street, Boston, Massachusetts.

Q. Where were you located in 1945? A. 12 East 33rd Street.

Q. You were manufacturing what? A. Handkerchiefs and infants wear.

Q. And that was in 1945? A. '45.

Q. Did you have a transaction that involved the purchase of some finished piece goods? A. Yes, sir.

Q. And is this the invoice you received in connection with that transaction? A. Positively, sir.

245 Mr. Rudykoff: Will you mark this for identification, please?

(Marked Government's Exhibit 9 for identification.)

Q. Now, in connection with that transaction did you issue two checks; one dated May 24, 1945, and the other dated May 25, 1945? A. Yes, sir, I did, sir.

(Marked Government's Exhibit 10 for identification.)

246 Q. I show you Government's Exhibit 10 for identification, and ask you if those are the checks which you issued in connection with Government's Exhibit 9 for identification? A. What does 9 mean, sir?

Q. This invoice. A. Yes, sir.

Q. Now, after you received the goods, did you have them sent somewhere? A. Yes, sir.

Q. Where? A. We sent them to be printed, sir.

Q. And what was the name of the company that did

that printing? A. Gee, I really forget the name, but it is somewhere in New Jersey. 247

Mr. Rudykoff: Will you please mark these?

(Marked Government's Exhibits 11 and 12 for identification.)

The Witness: I just can't think of the name.

Q. I show you Government's Exhibit 12 for identification, and ask you if that refreshes your recollection as to the name of the company to which you sent the material? A. The name is Lambert, that is right, Lambert. 248

Q. Lambert Printing Company? A. That is right.

Q. And after sending the material to Lambert, did you receive from Lambert Government's Exhibit 11 for identification? A. Yes, sir, that is the receipt for my material.

Mr. Rudykoff: Will you please mark that?

(Marked Government's Exhibit 13 for identification.)

Q. Who paid for the freight from your plant to the Lambert plant in New Jersey? A. I think the Lambert Company. They do that, sir. I don't know if we paid for it back, or they paid for it, because I can't remember. 249

Q. Do you recall the name of the company which did the expressing? A. I don't.

Q. Does this refresh your recollection, Government's Exhibit 13? A. I really don't remember very much. It must be, sir, because they picked up that lot.

Q. You are not sure? A. Well, I can't say exactly.

Q. May I have that, please. A. Yes, sir.

250

Mr. Rudykoff: I should like to offer in evidence, subject to connection, if the Court please, Government's Exhibits 9, 10, 11 and 12 for identification.

I might say, so as to clarify the situation, that they are being offered also subject to connection, of course, in relation to count 22.

The Court: And that is one of the counts set forth in the information?

Mr. Rudykoff: Yes, sir. The same numbered counts are related to the same material, so that

251

count 22 in the one information relates to count 22 on the other information.

Mr Hart: Subject to connection, with the reservation of the right to move to strike them out if not connected.

Mr. Siegel: Same objection on behalf of the defendant Deeb.

The Court: Subject to the right of defense counsel to move to strike them from the record if not connected.

Mr. Rudykoff: With which I concur.

252

(Government's Exhibits 9 to 12 for identification received in evidence.)

Mr. Rudykoff: You may inquire.

Mr. Hart: May we reverse the order and let counsel for Deeb examine?

Mr. Rudykoff: Of course. I have no objection.

The Court: All right. Mr. Siegel, Mr. Hart prefers that you examine the witness first.

Mr. Siegel: Yes, sir.

Cross-Examination by Mr. Siegel:

253

Q. Mr. Adjmi, is that the correct pronunciation? A. Yes, sir.

Q. You don't know the defendant Mr. Deeb in this case, do you? A. I do not, sir.

Q. And you never had any dealings with Mr. Deeb at any time? A. Who is Mr. Deeb?

Q. I say you don't know Mr. Deeb? A. I don't, sir.

Mr. Siegel: That is all.

Cross-Examination by Mr. Hart:

254

Q. Do you know Mr. Smith, the gentleman seated next to me? A. I do not, sir.

Mr. Hart: All right.

Redirect Examination by Mr. Rudykoff:

Q. Do you know the gentleman over there (indicating)?

Mr. Hart: Indicating?

Mr. Rudykoff: Mr. Deeb.

255

A. I don't know him. I don't.

Mr. Rudykoff: That is all.

The Court: All right. Thank you.

(Witness excused.)

Mr. Rudykoff: Mr. Wardi.

The Court: Were you in the courtroom?

Mr. Rudykoff: Yes, sir. He came about 3 o'clock.

Mr. Hart: I guess it is unavoidable.

256 ALBERT WARDI, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

Q. Mr. Wardi, what is your business or occupation? A. Selling goods.

Q. What kind of goods? A. Linen business.

Q. Were you engaged in that business back in April of 1945? A. Yes, sir.

Q. For how long have you been so engaged?

257 The Court: Excuse me for a moment. May I interrupt? The last witness wants to know whether he will be needed again.

Mr. Rudykoff: The Government will not need him.

Mr. Hart: I don't believe we will need him.

The Court: All right. Tell him then he may leave.

Q. For how long have you been engaged in the linen business? A. 20 years, sir.

Mr. Rudykoff: Will you please mark that Government's Exhibit 14 for identification.

258 (Marked Government's Exhibit 14 for identification.)

Q. Under what name are you engaged in the linen business? A. Under the name of Consolidated Linen Company.

Q. And is that at 302 Fifth Avenue? A. That is right.

Q. Will you please keep your voice up. A. That is right.

Q. I show you Government's Exhibit 14 for identification (handing to witness)— A. Yes, sir.

Q. From whom did you purchase that material described in Government's Exhibit 14 for identification? A. From L. A. Fox. 259

Q. Who was the man? A. Supposed to be L. A. Fox.

Mr. Hart: I don't know. I do not hear, and perhaps my hearing is not good, but I can't hear hardly anything that this witness is saying.

Mr. Rudykoff: He said it was supposed to be L. A. Fox.

Q. Who came to your place of business? A. Mr. Fox.

Q. Well, do you see anyone in court that you know? 260

Mr. Hart: May he finish? He said Mr. Fox and then he started to say something else.

Q. Did you say something else, or start to say something else? A. Yes, I know Mr. Albert Deeb for 10 years, 20 years.

The Court: You know whom?

The Witness: I know Mr. Deeb for ten years.

The Court: Mr. Deeb for ten years?

The Witness: Yes.

Q. You say ten years? A. Maybe more.

Q. Do you see him in court? A. I never saw him in court. I have never been in court. 261

Q. I mean, do you see Mr. Deeb in court now? A. Yes, I see him.

Q. Where is he? A. Over there in the corner.

Mr. Rudykoff: Indicating the defendant Deeb.

Q. Now, did you see Mr. Deeb in connection with the transaction which is set forth in Government's Exhibit 14 for identification? A. Not at this time, because my partner was taking care of this.

Q. Did you see him at a later time? A. At a later time
262 I saw Mr. Deeb.

Mr. Rudykoff: Will you please mark that?

(Marked Government's Exhibit 15 for identification.)

Q. I show you Government's Exhibit 15. Did you sign that? A. Yes.

Q. And is that a check for the bill which is Government's Exhibit 14 for identification? A. That is right.

263 Q. To whom did you give that? A. I was at the office at that time and I signed the check.

Q. To whom did you give it? A. It must be to Fox. I don't remember to whom.

Q. You gave it to someone? A. I gave it to Mr. Fox, or to somebody else.

The Court: It is not clear in my mind who this Mr. Fox is, and perhaps the question should be asked.

Q. Did you ever see Mr. Fox before? A. I met him once only.

264 Q. And who introduced you to him? A. Well, I saw him once with Mr. Deeb.

Q. Did he introduce you? A. Yes. He said, "This is Mr. Fox." That is all.

Q. And at that time did you have some talk about buying goods? A. Yes, with his representative, his agent, or something.

Q. Who was the representative? A. Fox.

Q. Who said he was a representative? A. Fox is the agent, he gets the merchandise.

Mr. Hart: I don't hear him at all.

The Court: He said, "Fox is the agent." 265

Q. A mill agent? A. Yes.

Q. Now, were there other transactions that you had with Deeb?

Mr. Hart: I object to the form of the question.

Mr. Siegel: I object to the form of the question.

Mr. Hart: Transactions had with Fox; Deeb introduced him.

Mr. Siegel: I object to the form of the question.

Mr. Rudykoff: I will withdraw it. 266

Q. Did you have any transactions with Deeb? A. Not through this Consolidated.

Q. Not through Consolidated? A. No.

Q. Did you have transactions with Deeb through some other name?

Mr. Siegel: I object to the question.

The Court: Overruled.

A. Not as far I know.

Q. Do you know of the firm Stein Tobler? A. Yes, sir. 267

Q. Did you sell them some merchandise? A. I sell them —I didn't sell them; I bought the goods through Fox for them.

Q. Did you see Deeb in connection with those transactions? A. Well, he knows something about it. I know that he has a connection with them.

Mr. Siegel: I object to the answer and move that it be stricken out as a conclusion of the witness.

The Court: I don't think the answer is responsive.

268

By the Court:

Q. You say that you met Mr. Fox with Mr. Deeb, is that correct? A. I met him before that.

Q. What is that? A. I met him once before.

Q. Did Mr. Deeb introduce you to Mr. Fox? A. I knew him first.

Q. Whom did you know first? A. Deeb.

Q. Deeb? A. Yes.

269 Q. How did you meet Fox for the first time? A. He came to the office and then Deeb knows him, but they were together in there.

Q. Mr. Deeb brought Fox to your office? A. No, Fox came first and then Deeb and Fox came together.

Q. On the second occasion? A. Yes, sir.

Q. All right. Who told you that Fox was a mill agent? How did you learn that? A. From Fox. He said he could get all the goods I want.

Q. He said that he could get all the goods you wanted? A. Yes.

Q. And was Deeb there when he said that to you? A.

270 Right.

By Mr. Rudykoff:

Q. You say he said what to you? A. He could get me all the goods I want.

Q. And was Deeb there at that time? A. I don't remember, Mr. Rudykoff.

Mr. Siegel: Well, I move that that be stricken out, not binding on the defendant Deeb.

The Court: At this time we will take it subject to connection. 270

Mr. Rudykoff: Will you mark that, please?

(Marked Government's Exhibit 16 for identification.)

Q. Now, I show you Government's Exhibit 16 for identification. Do you recall that transaction? A. Yes, this transaction.

Q. Is that a bill that you delivered to Stein-Tobler? A. That is right.

Q. And is that a bill which bears your name? A. That is right. 272

Q. And is the name L. A. Fox stricken? A. That is right.

Mr. Siegel: I object to the question.

The Court: The bill will speak for itself. Objection sustained.

Q. From whom did you get that bill? A. I got it from Fox and delivered the goods—and delivered the goods to Stein-Tobler, who offered some money, and I took the money myself with the arrangement. 273

The Court: I do not understand what the witness means.

Mr. Hart: I hope this witness is not testifying to anything important. I can't understand the witness nor can I hear him.

The Court: Suppose you ask him that question again.

By the Court:

274

Q. You received merchandise from Fox, did you? A. Yes, sir.

Q. And then you paid the bill? A. That is right.

Q. That you received from Fox, did you? A. I paid the bill—no, it is not that. They sent me a bill and I put my name on it and got the money from Stein-Tobler.

Q. What were you in this transaction, a broker? A. A broker, that is right. They are the people that send in—

Q. You were the broker for Stein-Tobler? A. That is right. Every bill I get 2-1/2 per cent. I sent him a bill.

275 Q. You received 2-1/2 per cent commission? A. That is right.

Q. On the total amount of the purchases? A. That is right.

By Mr. Rudykoff:

Q. Now, I show you the check which was attached to Government's Exhibit 16, and ask you if that is the check in payment of the transaction described in Government's Exhibit 16?

276 Mr. Siegel: I object to the form of the question, leading this witness. Let the witness state what is the fact.

The Court: Ask him what it is.

Q. What is that check? A. This is the check for the merchandise.

Q. And to whom is it payable? A. Payable to Albert Wardi.

Q. And that is yourself? A. Yes.

Mr. Hart: If the Court please, maybe I am not familiar with the practice in this court, but I certainly do not think that any witness should read a paper not offered in evidence, and there are so many things where we are reserving the right to strike out if it is not connected, that by the time we are through we will not know where we are. 277

The Court: In a case of this type such rulings are necessary.

Mr. Hart: I never had this experience where a check is offered for identification and then the U. S. Attorney hands it to the witness and says, "Whom is it payable to?" There is no sense in marking such things for identification if that is the practice to be followed. 278

The Court: I think your observation is well taken. Do not call for the contents of any paper which is only marked for identification.

Mr. Rudykoff: I will be glad to observe that.

Q. You said a moment ago that you got a commission in connection with this transaction. A. That is right.

Q. Does the fact that a check was made payable to you for the full amount of the invoice refresh your recollection as to whether you did or did not get a commission? 279

Mr. Siegel: I object to the form of the question.

The Court: No, I will allow it.

A. I got the commission.

Q. You got a commission in addition to the amount

A. That is right.

Q. —shown by this check?

Mr. Siegel: I object to the form of the question. The witness did not so testify.

280

A. I don't remember.

Mr. Siegel: The attorney is testifying for the witness.

The Court: The witness has answered. He does not remember.

Mr. Hart: The district attorney has said that he would heed the admonition of the Court and now the next question is did he get a commission in addition to the amount shown by this invoice.

281

Mr. Rudykoff: I submit that is perfectly proper.

The Court: All right.

Q. What did you do with the cash which you received from ~~this~~ transaction? A. I deposited it.

Q. To your account? A. Yes, sir.

Q. And that cash was the sales price of the material was it not?

Mr. Siegel: I object to the form of the question. The district attorney is now testifying as to what it represents.

282

The Court: How much was the cash?

The Witness: I don't get cash; I got a check.

Q. Well how much cash was involved? A. There is no cash.

Q. Didn't you cash this check?

Mr. Siegel: If your Honor please, this check is not in evidence, is it?

Mr. Rudykoff: Not as yet.

The Court: He has not offered it as yet. 282

Mr. Siegel: He is testifying to it subject to connection or what?

The Court: No connection yet. It has not been offered in evidence.

Mr. Siegel: Can the witness testify to that, or is it purely for the purpose of refreshing his recollection, or what?

The Court: It has been so indicated.

Mr. Rudykoff: Will you read my last question to the witness, please? 284

(Question read.)

The Witness: Yes.

Q. Did you deposit it to your account? A. Yes, I deposited it to my account.

Q. And you got the money? A. Yes, in my account.

Q. And in addition to that, as I understand it, you received the commission from Stein-Tobler?

Mr. Siegel: If your Honor pleases, this is the Government's own witness, and counsel here is testifying for the witness. 285

The Court: No, I don't think he is. Your objection is overruled.

By the Court:

Q. You received payment of the bill and you also received 2 1/2 per cent commission? A. I don't remember if I received the commission on that or not, but I do get a fixed commission from Stein-Tobler.

Q. On this particular transaction you don't remember
286 whether or not you received a commission? A. That is right.

By Mr. Rudykoff:

Q. I show you five invoices—

Mr. Rudykoff: Would you mark these as one exhibit, please?

(Marked Government's Exhibit 17 for identification.)

287 Q. That is Government's Exhibit 17 for identification, but first I want to ask you what persons did you see in connection with those transactions? A. With what?

Q. Whom did you see? A. Mr. Tobler.

Q. Who else? A. Stein. That is all. I gave him the samples and he O.K.'d the goods.

Q. From whom did you get the invoices? A. From L. A. Fox.

Q. Did you see or speak to Deeb with regard to the transactions, or any of them, which are described in Exhibit 17 for identification? A. Yes, I called him.

288 Q. Yes. And then what? A. He knows about it.

Q. Did you speak to him about it?

Mr. Siegel: I object to it and move to strike out "He knows about it."

The Court: Yes, strike that out.

By the Court:

Q. Did you speak to the defendant, Albert J. Deeb? A. I told I am buying those goods.

Q. Concerning that merchandise? A. Yes. 289

Q. What was the conversation you had with Deeb concerning those purchases or bills? A. That I could get more goods if I could use them.

Q. Who said that you could get more goods if you could use them? A. If Stein-Tobler sent me an order and I give it to them, and I will be able to go ahead and make my commission on that. I told that to Deeb.

Q. You told that to Deeb? A. To Deeb.

Q. And what did Deeb say to you? A. "Well, I will see * * * Possibly I will be able to give you some more."

By Mr. Rudykoff: 290

Q. Now, did you get certain checks from Stein-Tobler in connection with those transactions? A. Yes, I have my commission checks.

Q. I show you six or seven checks—

The Court: After Deeb told you that he would see if he could get you more goods, did you later have a further conversation?

Mr. Hart: The witness did not say that at all, your Honor. The witness did not say that Deeb said he would get more orders. 291

The Court: He said he will try to get them.

Mr. Hart: This witness said to Deeb he needs more goods.

The Court: We will find out if my recollection is faulty.

Mr. Hart: And that he will see Mr. Fox.

The Court: We will find out.

Mr. Hart: That he will see Mr. Fox.

By the Court:

292

Q. What did Mr. Deeb tell you? A. I am doing a good business.

Q. What else did he say besides your doing a good business? A. That is all I remember.

Q. Did he say anything about whether or not goods were available? A. He will try to see. He didn't tell me.

Q. What did he say about he would try? A. As soon as they have something available he will let me know.

Q. Now, then, after he told you as soon as there was something available that he would let you know, did he 293 later speak to you further about that? A. Then we cut that off, and it was only about five or six months, the transaction, and he can't get nothing.

By Mr. Rudykoff:

Q. Was that after these transactions which are described in Government's Exhibit 17 for identification? A. It must be this. That is all I have.

Q. After that was cut off? A. After that was cut off.

Q. Looking at these invoices, from whom did you get those, Government's Exhibit 17 for identification? A. From 294 Fox.

Q. Did you see Deeb at the time you got those invoices? A. I can't answer that. I don't remember.

Q. You don't remember? A. It is two or three years ago.

Q. To whom did you give the checks, which are Government's Exhibit 18 for identification? A. These are Stein Tobler checks.

Q. What happened to those checks? A. They are paying for these goods.

Q. Did you get them? A. Maybe a good deal of them. Some of them I sent out direct.

By the Court:

295

Q. Sent direct to whom? A. To Fox.

Q. Sent them to Fox? A. I did not send them. They sent them.

Q. You mean Stein-Tobler? A. Yes. Maybe I got a couple of them to see if we could get more goods.

Here is a check to see if we can get it.

By Mr. Rudykoff:

Q. Now, in connection with these transactions you say that you received a commission? A. Yes, sir, from Stein Tobler. 296

Q. I beg pardon? A. I received a commission from Stein-Tobler.

Q. Of how much? A. 2-1/2 per cent. It all depends, accordingly, 3 per cent, 3 cents.

Q. Three cents a yard, or 2-1/2 cents a yard? A. Three cents, 2-1/2 cents.

By the Court:

Q. What was it on a percentage basis, or so much? A. It depends upon the quantity and so forth that Stein Tobler bills. 297

Q. Didn't you have any set arrangement with them? A. 2-1/2 to 3 cents per yard.

Q. 2-1/2 to 3 cents per yard? A. That is right.

Mr. Rudykoff: I at this time offer in evidence Government's Exhibit 17 for identification, which constitutes five invoices.

Mr. Hart: May I see them, please?

Mr. Rudykoff: Surely (handing to Mr. Hart).

298 Mr. Hart: I assume that these are all offered subject to connection, the defendant reserving the right to move to strike out if they are not connected.

The Court: Yes. For the purpose of facilitating the trial at the present time, and there is nothing to connect this with your defendant at this time.

Mr. Hart: That is right.

The Court: We will receive them subject to your motion.

Mr. Hart: Yes, sir.

299 Mr. Siegel: And I will also offer the same objection unless those are connected with Mr. Deeb.

The Court: As to your client I receive it without any exception at this time. As to the defendant George Smith it is received subject to a motion to strike.

Mr. Hart: And Daisart?

The Court: And Daisart.

(Government's Exhibit 17 for identification received in evidence.)

Mr. Rudykoff: I at this time offer Government's Exhibit 18 for identification.

300 Mr. Hart: With the same reservation I will waive any objection.

Mr. Siegel: I object to them on behalf of the defendant Deeb on the ground that they are made out to the order of Mr. Fox with whom this witness testified he had transactions.

The Court: Received as to Deeb without reservation. As to the other defendants they are received subject to a motion to strike.

(Government's Exhibit 18 for identification received in evidence.)

Mr. Rudykoff: Would you mark these as one exhibit, please? 301

The Court: How many checks?

Mr. Rudykoff: Seven checks.

(Marked Government's Exhibit 19 for identification.)

By Mr. Rudykoff:

Q. Now, Mr. Wardi, I show you Government's Exhibit 19 for identification; to whom did you deliver those checks? A. George Howard. 302

The Court: To whom?

The Witness: George Howard.

Q. Did you see or speak to Mr. Deeb in connection with those checks? A. Did I speak with Mr. Deeb about those checks?

Q. Yes. A. This is George Howard who is supposed to be the mill representative, the agent.

The Court: No. You were asked a simple question. 303

The Witness: Yes, sir.

The Court: Did you speak to Deeb concerning those checks?

The Witness: Yes, sir, I did.

Q. What did you say and what did he say? A. "Is it O.K. to give him this money?"

He said, "All right. It is O.K."

Q. How much money was involved? A. Twenty thousand.

The Court: How much?

304 The Witness: Twenty thousand.

Q. And that was in payment of something, was it not? A. I deposited it.

Q. For what? A. For goods coming.

Q. Was that your first transaction? A. That is right.

Q. Was there talk about a deposit? A. That is right.

Q. As payment in advance? A. That is right.

Q. And with whom did you have this talk? A. With Stein-Tobler. I told him, "I could get you some merchandise if you can give me some money. I will make a deposit.

305 I can get you some merchandise." He said, "O.K. Go ahead."

Q. Who asked for the deposit? A. George Howard's company.

By the Court:

Q. Who is George Howard's company? A. George Howard.

Q. Who are they? Where are they? A. George A. Howard.

Q. We understand that. Where are they located? A.

306 That was Mr. Deeb's recommendation.

By Mr. Rudykoff:

Q. What is that? Mr. Deeb what? A. Mr. Deeb.

Q. What about Mr. Deeb? A. He told me they are all right, those people.

Q. And did you give those checks to Mr. Deeb? A. No, sir, to the Howard people.

Q. Was Deeb there at the time? A. I don't remember.

Albert Wardi—for Government—Direct

By the Court:

307

Q. Had you ever met this man Howard before? A. Yes.

Q. Where had you met him before? A. He was in my office.

Q. Who brought him to your office the first time? A. He was making transactions. I don't remember, but we had some transactions somewhere else.

Q. How did he come to your office, do you recall, the first time? A. He came to my office and then Deeb came along and told me, "He is all right. Give it to him."

Q. That was the only checkup you made on Howard as to who he was? A. Yes.

308

Q. And you gave him $20,000? A. Yes.

By Mr. Rudykoff:

Q. Well, when you spoke to Deeb did you tell him what these checks were? A. Yes, I told him.

Q. Did you tell him for what? A. For a deposit, for future delivery of the goods.

Q. Delivery of what? A. Of the goods.

Q. And after that did you sell Stein-Tobler the goods described in Government's Exhibit 17? A. I didn't—yes, I gave them the goods.

309

Q. Is that correct? A. That is right.

Q. First you gave a deposit, right? A. That is right.

Q. And then you had these transactions? A. That is right.

Q. And before you gave your deposit Deeb told you it was O.K.? A. That is right.

Mr. Rudykoff: I offer these in evidence, Government's Exhibit 18 for identification.

Mr. Hart: Subject to the same reservation.

310 The Court: Yes, Mr. Hart, there is no evidence at this time connecting them with your client, but we will receive them, for the purpose of expediting the trial.

Mr. Hart: Your Honor says "your client"; but really there are two of them.

The Court: That is right.

Mr. Siegel: And I make the same objection on behalf of the defendant Deeb.

The Court: Received as to your client.

311 (Government's Exhibit 19 for identification received in evidence.)

Mr. Rudykoff: You may inquire.

Cross Examination by Mr. Siegel:

Q. You were in the brokerage business of selling cloth, weren't you? A. Yes.

Q. And you met Mr. Fox and you met Mr. Howard and met a number of other brokers in your office? A. Plenty.

Q. You met Mr. Deeb and Mr. Deeb was also a broker? A. Right.

312 Q. And you had transactions with all of these people that you talked about? A. With Mr. Howard.

Q. And with Mr. Fox? A. Yes.

Mr. Siegel: That is all.

The Court: Any further questions?

Mr. Rudykoff: No further questions.

Mr. Hart: I have no questions.

Mr. Rudykoff: I might for the purpose of the record indicate that Government's Exhibit 17 is offered in connection with count 22. 313

At this time there are no further witnesses in court here.

The Court: Ladies and gentlemen, I am sorry to have detained you a few minutes later today than I intended.

Tomorrow morning I have to attend the funeral of a very dear friend of mine, Judge Patterson of Bronx County, with whom I was associated for many years, and I won't be here until 2 o'clock. I hope that does not inconvenience you or counsel too much. 314

Mr. Rudykoff: Not at all, your Honor.

The Court: We will adjourn then until 2 o'clock tomorrow afternoon, and at that time please be here promptly. Do not in the meantime discuss this case amongst yourselves, nor form or come to any conclusion as to the guilt or innocence of any of these defendants. If anyone should approach you concerning this case, report it immediately to the Court. You are excused then until 2 o'clock tomorrow.

(Adjourned to November 18, 1947, at 2 o'clock p.m.) 315

New York, November 18, 1947.
2 o'clock p.m.

316

TRIAL RESUMED.

Mr. Rudykoff: With the Court's permission, I should like to read certain portions of the contracts which are in evidence.

The Court: Exhibit number what?

Mr. Rudykoff: I shall start with Exhibit No. 4.

317

The Court: Any portion that you do not read the defendant's counsel may read, if they so desire, after you are through.

Mr. Rudykoff: Of course. I see there is nothing on Exhibit 4 which I will read at this time.

Exhibit 5 (reading portions of Government's Exhibit 5 to the jury.)

Mr. Rudykoff: If the Court please, Exhibit 6 for identification—

The Court: The confidential contract?

Mr. Rudykoff: Yes. That was offered for the reasons stated.

318

The Court: I told defendants' counsel that I would examine that, but I haven't had the opportunity to do so.

Mr. Rudykoff: What I propose to do, with the Court's permission, is to read just an excerpt from it. I do not think that will seriously affect the restrictive nature of the contract.

The Court: Have you other exhibits that you intend to read now?

Mr. Rudykoff: Yes.

The Court: I suggest that you permit me to examine this first, if it won't interrupt your orderly procedure as to it. 319

Mr. Rudykoff: Not at all.

The Court: While I read this, you may go to the next exhibits.

Mr. Rudykoff: I have indicated the sections I propose to read.

The Court: With the yellow papers?

Mr. Rudykoff: Yes.

I now read Exhibit 8 in evidence, dated March 2, 1945 (Reading to the jury).

The Court: I have examined the confidential contract, the contract marked Government's Exhibit 6 for identification. I find nothing in it that should be disclosed in the interest of justice to the defendants or their attorneys. I do not believe that the contract was marked in evidence, was it? 320

Mr. Rudykoff: It was not.

The Court: You now offer it in evidence, or such portions as you read?

Mr. Rudykoff: I just wish to offer the portion which I read.

The Court: I will receive such portions as you read. 321

Mr. Hart: If the United States Attorney is going to read part of the document which is produced in court, and counsel has had no opportunity to see the document, knows nothing about it, is not a party to the transaction set forth in that document, we respectfully object to any part of it being read in evidence.

The Court: I have examined the entire contract, the entire exhibit, which concerns a contract with the

Navy Department, which is marked restricted. Counsel for the Government has also pointed out to me such portions as he intends to disclose. I feel that the withholding of the balance of the contract, after my examination of it, will work no injustice to the defendants.

322 I therefore overrule your objection.

Mr. Hart: Will your Honor at this time advise the jury that the defendants, or any of them, are not a party to that contract and never saw it?

The Court: I do not think such instruction is necessary at this time.

323 Mr. Hart: You will at the appropriate time?

The Court: It is entirely a contract made between the Government, by the Navy, and Metals Disintegrating Corporation, as to which none of the defendants are parties.

Mr. Hart: Thank you.

(Mr. Rudykoff read portions of Government's Exhibit 6 to the jury.)

Mr. Rudykoff: Which I ask here to be considered in evidence as Government's Exhibit 6, if the Court please.

324 The Court: Received over the objection of the defendants' counsel.

(Portions of Government's Exhibit 6 for identification read by Mr. Rudykoff received in evidence as Government's Exhibit 6.)

Mr. Rudykoff: Mr. Noel.

The Court: I assume defendants' counsel do not desire to read any part of the exhibits other than those that were read to the jury at this time? 325

Mr. Hart: Not at this time, your Honor. I understand they have been received subject to connection. Until they are connected, I have no interest in them.

Don O. Noel, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

326

Q. Mr. Noel, what is your business? A. I work for the Metals Disintegrating Company, manufacturer of metal powders.

Q. In what capacity? A. In what capacity, you mean?

Q. Yes. A. My job is chief engineer.

Q. What was the business of Metals Disintegrating Company in 1945? A. It has always been the manufacture of metal powders.

Q. What has been your training professionally? A. I have an engineering degree.

Q. Have you practiced your profession? A. Yes.

Q. Have you specialized in any particular type of work? 327
A. In school mining engineering, but since then it has been strictly in connection with metal powders.

Q. What are some of your duties in connection with your employment with the Metals Disintegrating Company? A. The Engineering Department is responsible for setting up of the processes, putting them in production, and maintaining the equipment.

328 Q. Did you set up the process that you used in 1945 for utilizing these metals? A. The specific equipment, yes. The process was originated before I came with the company.

Q. During 1945 was the company doing work for the Government? A. Yes.

Q. What kind of work was it doing? A. We were doing quite a variety of work. We manufactured aluminum and magnesium powder, copper, iron, and quite a number of others.

Q. What are the uses to which the manufactured product
329 was put? A. A great deal of it was used for pyrotechnical work, such things as incendiary bombs, star shells, and various other specifications.

Q. What were some of the metals which you were dealing with? A. We were dealing with aluminum and magnesium, aluminum and magnesium alloys, copper, lead, tin, nickel and iron.

Q. How many plants had the Metals Disintegrating Company during 1945? A. During the war we had two plants of our own and operated a third for the Navy.

Q. Where were those plants located? A. One of our plants was in Elizabeth and the other in Verona, both in
330 New Jersey. The Navy plant was in St. Louis, Missouri.

Q. Was the St. Louis plant a similar plant for war purposes only? A. Yes, it was.

Q. Was substantially all of the work done in 1945 and 1944 by Metals Disintegrating Company war work? A. It was connected with war work entirely, yes.

Q. Was the Verona plant used for any particular purpose? A. We had two principal jobs running in Verona. One was the manufacture of magnesium powder, the other was in connection with an Army project which is restricted.

Q. Does that have any name which is not restricted? A. In connection with the Manhattan project. 331

Q. That is what is commonly known as the atomic project? A. Yes, sir.

Q. What if any particular type was done at Verona? A. For the war jobs that I just mentioned, magnesium, and the Army job.

Q. And Elizabeth? A. In Elizabeth we handled some magnesium and also quite a lot of aluminum and most of the other materials which I have mentioned.

Q. Did you in connection with the operation utilize certain bags? A. Yes, we did. 332

Q. From whom were they purchased? A. I could not give you the complete answer on that. I know some were purchased from Daisart—

Q. Daisart Manufacturing Company?

Mr. Hart: May he finish his answer?

Q. Have you completed your answer?

Mr. Hart: "some were purchased from Daisart".

A. I do not know the names of the other possible suppliers. I did not do the purchasing. 333

Q. With regard to the use of bags at the Elizabeth plant, tell us how they were used, in your own words. A. In our Elizabeth plant the procedure used was for the construction of what we call bag hoist, which were used to filter off the dust out of the air stream in which they were carried. They were commonly known as a bag hoist. The cloth was used to form bags through which air passes and the metal powder was trapped and was contained there.

Q. Can you describe the form of the bag at the time
334 when it was used? Was it open or closed? A. It is what we call an envelope type of bag. It would be perhaps best to say like a rather flat sack.

Q. With a bottom? A. It was open only on the top of the bag.

Q. Were the sides separated one from the other? When the bag was to be used, were the sides separated one from the other? A. We inserted a metal frame to keep the bag from collapsing undr suction.

Q. In that form what part of the bag was utilized, the exterior part or the inside part? A. It would be the ex-
335 terior part of the bag which would be utilized.

Q. Were they arranged in certain directions, one upon the other or one inside the other, or just how? A. They were built into a certain framework side by side with only sufficient space between for the air to pass after the metal powder had been allowed to build up in the bags.

That would have been a space of perhaps three-quarters of an inch apart.

Q. What was the condition of the metal before it came in contact with the bags? A. It would be fine powder.

Q. Was it blown against the sides of the bags? A. While
336 it was being carried in the air stream, being in contact with the air stream. At the time it reached the bag its velocity was very low.

Q. Did it adhere to the sides of the bag? A. Surely; some would drop down.

Q. What if anything was done after that process was completed? A. The original process would be stopped and any dust adhering to the bags would be taken off and collected eventually and blended in a form of product to be used.

Q. With regard to the size, how large were those bags? A. They varied in minor dimensions. Roughly, they were about 4 feet by 5 feet in area; 4 feet wide and 5 feet deep. 337

By the Court:

Q. 4 feet wide and 5 feet deep, the bags were? A. Yes.

Q. They worked like large vacuum cleaners; the dust instead of going into the inside of the bag would go on the outside? A. Yes.

Q. Like a household vacuum? A. Yes.

By Mr. Rudykoff: 338

Q. What would be the proper formula for computing the area of a single bag? A. On the assumption that the bags were 4 feet wide and 5 feet deep, the area would be 4 feet times 10 feet. That is, the bag has two sides.

Q. It would be twice the area of one side? A. Yes.

Q. Or 40 feet in that particular occasion? A. 40 square feet.

The Court: That would be both sides of the bag?

The Witness: Yes, sir.

339

Q. In connection with the operations at Verona, New Jersey, how were the bags used? A. In Verona, if the bags were used in connection with the magnesium process, they collected the slurry of magnesium powder in mineral splints. We would use a filter and process out and leave the relatively dry powder inside the bag.

Later these bags containing the semi-dry powder were centrifused and put in a dry hoist to remove the remaining mineral splints, after which the bags with the dry powder

inside were shipped to the customer who used them in the
340 trade.

Q. Is it correct to say that in that process the inside of the bag was utilized? A. Yes, sir, that is right.

Q. What was the form of the product at the time it was first received by the bag? A. It was always in a powder form.

Q. Was it mixed with anything? A. With mineral splints.

Q. When mixed in that form, what is it called? A. I mentioned it as being a slurry.

341 Q. Is it also called a sludge? A. Yes, sludge.

Q. Powder mixed with some kind of liquid? A. Mixed with some kind of liquid.

I might also mention that we do some of that in Elizabeth as well as in Verona.

Q. What was the size of the bags utilized for the purpose which you last described? A. I do not believe I could give you the dimensions too closely on that.

Q. Approximately. A. I would guess them to be somewhere in the neighborhood of 24 to 36 inches in diameter; around 30 to 36 inches deep, although I am not too positive on that.

342

The Court: Circular in form?

The Witness: Roughly, yes.

Q. Would it be described as a circular bag?

The Court: Cylindrical.

Mr. Rudykoff: That would be more correct.

Q. In computing the area of that kind of bag, what is the formula? A. Approximately the formula would be to

take the diameter of the cylinder times pi, which would give the circumference, and that times the depth of the bag would give the area. 343

By the Court:

Q. Pi is what? A. 3.16.

Q. Roughly, it is the diameter times three times the depth? A. Yes, sir.

By Mr. Rudykoff:

Q. In connection with the St. Louis plant, were any other type of bag used? A. We used the same bags in St: Louis that we used in Elizabeth. However, that was handled entirely through the Navy, not through our Elizabeth office, as far as the purchases were concerned. 344

Q. Did you examine the bags from time to time? A. Yes.

Q. Confining your answer to the bags at Elizabeth, New Jersey, as best you can, will you describe the material? A. The material that we specified, when we could get it, is what is called a 1.32 sateen.

Q. What was the appearance of this material as you observed it, mostly? A. It carried a natural grayish, white duck color; looks very much like a tent material. 345

Q. With regard to the material used at the Verona plant, was that any different than the material you just described? A. Some of it was the same. Of course, during the war you could not always get the exact specifications. In general it was very similar.

Q. Do you recall using in connection with these bags material like rayons? A. I do not think that we did in connection with any of that work.

Q. Did you ever use a light blue material? A. I do not
346 ever recall seeing any.

Q. Did you ever use a maize material, m-a-i-z-e? Do you know what that color is? A. I do not know what it is.

The Court: A corn color.

Q. A corn color. A. I do not recall of any.

Q. Do you know what a dusty rose material is? A. Yes. We had none of that.

Q. What about white taffeta, white jerseys, do you ever recall seeing those? A. I am afraid I am not enough of an
347 expert on cloth to be certain. Unless it resembles duck very closely, I am sure we did not have it.

By the Court:

Q. Did the weave of the material that you used have to be close? A. Yes, sir, to arrest the very fine dust.

Q. Was the material that you used cotton? A. Cotton duck.

Q. We could call it sheeting? A. No, it would be more like tent material.

Q. A lightweight duck material? A. Yes.

348 Q. A canvas material? A. That is correct.

By Mr. Rudykoff:

Q. By the way, what in your opinion, approximately, would be the largest size bag that you ever used in your Verona or Elizabeth plants? A. I think 4 feet wide by 5 feet deep bag would be the largest.

Q. 4 by 5 feet? A. I think so. There were perhaps a few cases where we might have a smaller diameter but

a longer bag, but I think that would be the largest single area. 349

Mr. Rudykoff: You may inquire.

Cross Examination by Mr. Hart:

Q. You used the word, if I heard you correctly, "sateen". Did you use "sateen" in answer to counsel's question for a description of the material that was used at your plant? A. Yes, used definitely at Elizabeth; I think occasionally in Verona.

Q. By "sateen" you mean a shiny material, do you? A. 350
Frequently—I cannot give you the exact definition. The only thing, I remember the weave of the material was tight enough to arrest the dust we were trying to get out.

Q. Where did you get the word "sateen" from? A. It was some of the information given to us by which to withhold this dust, and specified for the work. We used it in this work.

Q. Was it a shiny material? A. I would not say it was shiny.

Q. Was it lustrous? A. No.

Q. Smooth? A. No. It was rather rough.

Q. Would you say that you used material like tent 351
material "whenever we could get it". Was there difficulty in getting material? A. Oh, yes.

Q. You had occasions where you had to take what you could get, isn't that so? A. We would not necessarily specify that material and receive it, this particular grade of 1.32 satin, whatever it would be, or something very similar to it, because we had to arrest the dust. That was being used to catch it. They always bought enough and it

was in large volume. It would let the liquids through it
352 while the dust would rise. We did not have very much latitude. I might say that while our specifications in purchasing would call for 1.32 satin, we might have had other materials. It would not qualify strictly to each specification.

By the Court:

Q. What do you mean by 1.32? A. 1.32, I believe refers to the closeness of the weave.

Q. Closeness of the weave? A. I think so.

353

By Mr. Hart:

Q. When you say "we specified", do you mean you specified it in your orders? A. Not exactly.

Q. Do you know whether the orders of your concern did specify 1.32 for any other type of sateen? A. Yes.

Mr. Hart: May I have the orders, please?
Mr. Rudykoff: Yes (handing to Mr. Hart).

Q. Isn't it a fact that your orders were for so many
354 bags (handing witness); 700 bags; 50 special bags; 483 bags? A. I think the way this worked, Mr. Ryan, here—

Q. Hart is my name. A. I am sorry.

Q. That is his Honor's name. A. I think the way this worked, in setting up the process we specified the type of material which could be used in this case, the particular grade of cloth.

Q. Mr. Witness, I asked you the question as to whether your orders specified any particular type of material. I

am showing you the orders. Will you answer the question? A. Some, I think, you will find did specify it. 355

Q. Will you find them (handing witness)? A. Surely.

Q. Orders for bags that you referred to. A. Yes.

The Court: The witness is examining Exhibit No. 5?

Mr. Hart: Yes, your Honor. I said that, your Honor, I want to make sure.

Mr. Rudykoff: I think it is 5, 6 and 7.

Mr. Hart: 5, 6 and 7. The witness shows one order dated—

The Witness: February 27. 356

Q. Is that it? A. I believe so.

Q. Dated February 27, 1944, on which at the top is 1.52—A. 32.

Q.—1.32, specifies bags 42½ inches fly and 60 inches long. Do you find any others? A. No.

Q. Do you find any others for any material specified other than that one order? A. That is the only one in which that particular material is definitely requested.

Q. Is there any order on which any material or any type of material is specified outside of that one we have just referred to? A. Not on the orders. Excuse me: I presume there might be some other mills in there. I do not see any where this particular grade of satin is specified. 357

Q. Do you see any other order that specifies sateen or any other material other than that one? A. There is one in which heavy duck was specified, as I recall, not in the form here.

Q. You say there was one more than you recall which specified heavy duck? A. Yes.

Q. Outside of those two, none of the orders had any
358 specification of any nature or description? A. No.

Q. Isn't it a fact that Mr. Smith of Daisart made up some woolen bags that were specified at your request? A. It is quite possible.

Q. Don't you recall that? A. I do not recall whether Daisart had used woolen bags from time to time. We ordered a small quantity for experimental work.

Q. Did Mr. Smith furnish woolen bags that you had requested?

Mr. Rudykoff: I submit that has been answered
359 fully.

The Court: He may answer.

Mr. Hart: If the Government is satisfied with the answer, I will not persist.

The Court: The witness may answer.

Did you get woolen bags from Smith's company at times?

The Witness: We very likely did.

The Court: Were they in large quantities, the woolen bags?

The Witness: No, your Honor. The woolen bags
360 were used only in some production type. I think we did use some but they were not a large quantity item.

Q. You did not order the bags, did you? A. No.

Q. You know that sateen has a smooth finish, a satiny surface, a close-weave cloth, the surface like a rayon finish? A. It may be it is not like satin.

Q. Like rayon? A. I would assume that rayon would be in quite a number of different grades and textures.

Q. Do you know how many woolen bags were delivered by Daisart? A. No, I could not say. 361

Q. Where were you stationed, in Verona or Elizabeth? A. My headquarters are in Elizabeth.

Q. What did you say the nature of the material was which you desired to use at Verona? A. We had standards on that 1.32 sateen, which I mentioned and which we called standards. We tried to approximate it as closely as we could in purchasing.

Q. You had difficulty in doing that? A. Yes.

Q Did you use the same type of material or desire the same type of material in Elizabeth as you did in Verona? 362
A. In general I would say yes.

Q. In one of them you put the sludge inside of the bag. That was Verona? A. Yes.

Q. The other you blew the particles against the bag? A. That is right.

Q. What did you do in St. Louis? A. We manufactured aluminum powder for the Navy.

Q. The form of aluminum powder that you manufactured generally was put in bags? A. It was filtered in bags, not shipped in bags.

Q. When you say "filtered", you are telling us about the process used in Elizabeth? A. Yes. 363

Q. The same type of bag would be used in St. Louis? A. That is right.

Q. How often were you in St. Louis? A. About four or five times, I guess.

Q. Do you know how many bags were shipped to St. Louis by Daisart? A. I do not know whether Daisart shipped any to St. Louis.

Q. You do not know whether they did or not? A. No.

Q. You do not know that they did not, do you? A. As
364 a matter of fact the purchases for St. Louis were handled not by our company.

Q. Do you know, are you prepared to say under oath as a witness, that Daisart did not ship bags to St. Louis? A. No.

Q. There were hems and flaps in the bags? A. Yes.

Q. Overlapping seams? A. Yes. As a matter of fact, I would say that the dimensions I gave for the bags would be ample to take care of that.

Q. I believe you said the dimensions were 4 by 10? A. Yes.
365

Mr. Rudykoff: 4 by 5.

Q. 4 by 5. A. The actual bag size in these cases ranged in the neighborhood of that. It was 43½ to 46½ inches wide; say 48 inches; would take care of the overlap.

Q. How long were they? A. 5 feet.

Q. Was the flap on the length or on the width? A. It would be sewed up on the sides, on the bottom.

Q. You are not familiar with the manufacture of bags, are you? A. Not too much in detail.

Q. You are not familiar with the proportion of waste
366 in the manufacture of the complete product? A. No, I could not say anything about that.

The Court: Were there hems at the top of these bags?

Mr. Hart: I did not get your Honor's question.

The Court: Are there hems at the top of the bags?

Q. The hems were inside and they were on the bottom sides? A. That is where they were folded. 367

The Court: That would be the seams?

Q. Seams? A. There might be a small seam on some of them.

Q. Do you know how wide this material was that these bags were made from? A. No.

Q. Do you know in the manufacture of bags how wide the material is? If they make up a 4-foot bag and the material is 36 inches wide, they have to use more than one width of material? A. I would presume so. 368

Q. You do not know how many bags Metals purchased from Daisart or purchased from anybody, do you, including St. Louis, Verona and Elizabeth? A. Including St. Louis?

Q. Yes. A. I do not know about St. Louis. I do not know if they purchased any from Daisart.

Q. Did you personally supervise the receipt of these bags from Daisart? A. No.

Q. You did not sign for every delivery? A. No.

Q. You did not order them? A. No, not in all cases. In some cases, yes. 369

Q. You ordered them. What is your name? A. Noel.

Q. You ordered them, purchased—ordered the bags? A. Could I correct that statement? I perhaps gave you the wrong impression. I should not say I ordered. I may have initiated the order. It went through the purchasing department. Our orders went through our purchasing department.

Q. Who in your purchasing department places orders? A. Mr. Forest.

Q. Do you have a Mr. Hall in Verona? A. He could
370 initiate orders but they would be cleared through Mr. Forest.

Q. Mr. Forest has said that Mr. Hall also ordered through the Daisart purchasing agent? A. If they had that arrangement, I was not aware of it.

Q. You were not aware of everything that went on with respect to purchasing, were you? A. No, sir.

Q. Just one moment, please. Do you recall an occasion when a freight car was held up when was destined for St. Louis from Verona? A. Was held up?

371 Q. Awaiting a shipment of bags from Daisart? You were there? A. I have no recollection of it.

Q. Would the figure of 12,000 refresh your recollection as to the freight car that was held up awaiting the arrival of bags from Daisart to be shipped to St. Louis? A. I am sorry. I do not recall it. It might have been.

Q. Do you recall any other occasion when a freight car was held up? A. We had a good many freight cars held up for various things.

Q. Sometimes for bags; sometimes for materials? A. Yes.

372 Mr. Rudykoff: I object. He has answered it.

Mr. Hart: This is cross-examination.

The Court: Address your remarks to the Court. The objection is overruled. Proceed, now.

Q. You have answered not that you recall? A. The particular case that you mentioned I do not recall, no.

Q. You won't say it did not happen? A. No, I could not say that.

Mr. Hart: That is all.

Cross Examination by Mr. Siegel: 373

Q. You do not know Mr. Deeb, one of the defendants in this case? A. No.

Q. You have had no dealings with Mr. Deeb? A. No.

By Mr. Hart:

Q. Did you ever meet Mr. Smith? A. No, sir.

Mr. Rudykoff: Do you want Mr. Noel? Will you require the witness? 374

(No response.)

The Court: I think it is appropriate to take a recess of about five minutes.

DONALD MCLAREN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

Q. Mr. McLaren, what is your business or occupation? 375
A. I am a partner in the Meadtex Fabrics Company.

Q. What is the nature of the business of the Meadtex Fabrics Company? A. They are converters of cotton and rayon piece-goods.

Q. How long have you been engaged in that business? A. That company started on December 18, 1942.

Q. How long have you been in that industry? A. Since its inception.

Mr. Rudykoff: Mark this.

376

(Marked Government's Exhibit 20 for identification.)

Q. I show you a letter dated January 26, 1945, which is part of Government's Exhibit 20 for identification. From whom did you receive that? A. Daisart Sportswear, Inc.

Q. Thereafter did your firm render an invoice which was attached to it? A. Yes, sir. These appear to be photostatic copies of our letters, our firm.

Q. Were those invoices paid by Daisart? A. Yes, sir.

377

Mr. Rudykoff: I offer Government's Exhibit 20 for identification in evidence (handing to counsel). Mark this for identification.

(Marked Government's Exhibit 21 for identification.)

Mr. Hart: Do you refer to each of the letters or just the top letter.

Mr. Rudykoff: The entire exhibit with the attached documents.

Mr. Hart: I will have to ask your indulgence while

378

looking at it.

Mr. Rudykoff: Surely. I will be glad to ask the witness.

Q. I direct your attention to a letter dated January 26, 1945, which is part of Government's Exhibit 20 for identification and particularly to the writing which appears at the lower right-hand corner. Can you identify the writer? A. No. I think I know the name, but I cannot identify the writer.

Mr. Hart: Were they in that letter when he received it? That is all I want to know. 379

Q. Will you answer that question? A. I cannot say yes or no on that.

The Court: These are photostats of papers taken from your files?

The Witness: That is correct.

Q. Were these kept in the daily course of your business? A. Yes.

380

Mr. Hart: With respect to the writing on there, if the Court please, I move this be excluded or covered in the interest of clarity. The witness says he does not know who wrote it.

The Witness: I said I think I know what it means.

Mr. Hart: He testified he cannot say whether it was on there or not at the time.

The Court: Has Mr. Siegel seen it?

Mr. Siegel: No, I haven't seen it.

Mr. Rudykoff: I direct the attention of Mr. Hart to the fact that it is dated January 29, 1945, and is attached. I think it speaks for itself. Perhaps after 381. reading that, you may decide to withdraw the objection.

Mr. Hart: I have no objection to the letter of January 29th going in, or the letter of January 26th going in, but the notation on the bottom—

The Court: Will you address your remarks to the Court, please.

(Mr. Rudykoff hands paper to counsel.)

Mr. Siegel: May I see it, please?

382 Mr. Rudykoff: Surely (handing to Mr. Siegel).

May I in the interest of saving time mark these for identification?

(Marked Government's Exhibits 22 to 32 inclusive for identification.)

Mr. Siegel: I object to it on the ground it is not binding on the defendant Mr. Deeb.

The Court: May I see it?

Mr. Siegel: Surely (handing to the Court).

The Court: Received in evidence.

383 Mr. Siegel: I make objection on behalf of the defendant Deeb.

The Court: Received.

Mr. Hart: You are receiving the written part?

The Court: You mean the notation on the bottom of one of the letters?

Mr. Hart: Yes.

The Court: Yes, I will receive the entire paper in evidence.

(Government's Exhibit 20 for identification received in evidence.)

384 The Court: You said you know what those notations are on the letter?

The Witness: That is correct.

The Court: That is Exhibit 21, would it be?

The Witness: Can I see this for a minute?

Mr. Rudykoff: Surely (handing to witness).

The Witness: I am not a WPB expert, but I am expert enough to know about War Production Board regulations, like everyone else.

When priorities were extended to us, they had to be extended under certain written conditions which did vary from time to time. In this WPB 542 it is my recollection that this is a WPB question, and it was presumed that in time the party would apply for a priority. 385

At another time when the War Production Board regulations required them in the extension of all priorities that the statement should be made that this might be used under M328, which was a War Production Board regulation.

Now this—I see the words "and use", and then it looks like "powder", something or other—I cannot make it out. I do not know what the term is. I only make that explanation in connection with it. 386

Q. I direct your attention to a letter, which is annexed to Government's Exhibit 20, dated January 29, 1945, and ask you to read it and tell us if that does not refresh your recollection as to the reason for that hand legend on the first document? A. Yes. This is a letter addressed to my company: "As per phone conversation on the following"—

Q. Read that to yourself. A. Oh. Yes, I have.

Q. Is your memory refreshed? A. I can make the statement that this probably is to notify our office as to what is required thereafter. This written statement was given to the office, sent by Daisart, to furnish us with the information that we required to make the priority proper in form. 387

Q. Was that information put on that letter which is dated January 26, 1945 after receipt of the letter dated January 29th? A. I could not say. I do not know.

Mr. Rudykoff: May I at this time read the exhibit?

388 The Court: Yes, Exhibit 20.

Mr. Rudykoff: Exhibit 20 in evidence.

Exhibit 20, the first document is on the letterhead of the Daisart Sportswear, Inc., 99 Central Avenue, Mitchell 2-3335, Newark, New Jersey, dated January 26, 1945, addressed to Meadtex Fabrics Company, 440 Fourth Avenue New York, Gentlemen (reading to the jury).

Attached to that is a letter dated January 29, 1945, also on the Daisart Letterhead, addressed to Meadtex

389 (reading to the jury).

Q. Mr. McLaren, with regard to this note dated February 2, 1945, which is part of Exhibit 20, by whom is that prepared? A. Our office.

Q. Is that letter sent to the customer? A. Yes. We make that out in two copies which are sent to the customer. The customer then signs them and returns them to us. I or one of my partners signs, and one of them goes back to the customer, and then one would be retained in our files.

Q. What kind of material was involved? A. I must ex-

390 plain that I am in the financial end of the office. I am not thoroughly conversant with the merchandising angles, but I am quite sure that was cotton piecegoods.

Q. In the invoice there appears a case number, is that correct? A. That is correct.

Q. Is that the usual and customary manner of describing materials sold in the textile industry? A. Of that type, yes.

Q. There is reference to "King 35/36." To your knowl-

edge, what does that mean? A. That means the width will run between 35 and 36 inches. 391

Q. That describes the width only, is that right? A. Yes.

Q. The yardage billed, did that represent the length of the material? A. May I explain this: in shipping goods we use the figure "12". That represents 12 pieces. There is a figure of 1514. That is the total yardage in that case.

Q. Does that represent the length of that particular piece? A. No; because it would be 12 pieces. That is the length of the 12 pieces in that case.

Q. That figure "1514" is the aggregate length of the 12 pieces? A. Yes, sir. 392

Q. Is that right? A. Yes, sir.

Q. The figure "35/36" is descriptive of the width? A. Yes.

Q. Is that in terms of inches? A. Yes, sir.

Q. Is the length in terms of yards? A. Yes.

Q. Is that the usual and customary manner of describing textiles of different kinds? A. Of this character, yes.

Q. I show you Government's Exhibit 22 for identification and ask you if those documents attached to the letter dated February 15, 1945, are description of the transaction had with Daisart Sportswear? A. Yes, sir.

Q. Were those documents kept in the ordinary course of your business? A. Yes. 393

Q. Are they kept currently as the transactions arose from time to time? A. That is correct.

Mr. Rudykoff: I offer them in evidence (handing to counsel).

The last exhibit, 21, had reference to count 6.

The Court: 20?

Mr. Rudykoff: I am sorry. 20 has reference to
394 count 6.

Mr. Hart: No objection.

Mr. Siegel: The same objection on behalf of the defendant Deeb.

The Court: Received.

(Government's Exhibit 22 for identification received in evidence.)

The Court: What did you say the name of your company was?

395 The Witness: Meadtex Fabrics Co.

The Court: Is Meadtex the trade name or the name of a partnership or the name of a corporation?

The Witness: It is a partnership. Meadtex represents the first initials of each one of the partners, for your information.

The Court: I see.

Mr. Rudykoff: That is count 6. It says S. Meadtex.

The Court: Yes.

Q. With regard to Government's Exhibit 22, how many
396 yards were ordered?

Mr. Hart: You may lead him on that.

Q. It is 75,000 yards? A. That is what I want to say. That is our order form, 75,000.

Q. Is that a fact? A. That is a fact.

Mr. Rudykoff: This refers to count 10, if the Court please.

Q. You certify that is the same as in the previous case? A. I have. 397

Q. I show you Government's Exhibit 23 for identification and ask you whether that refers to a transaction had with Daisart Sportswear, Inc? A. Yes, sir.

Q. Were those documents kept by your concern in the regular course of business? A. Yes.

Q. And made currently at the time of the transaction? A. That is correct.

Mr. Rudykoff: I offer them in evidence (handing to counsel). 398

Mr. Hart: No objection on behalf of the defendant Smith.

Mr. Rudykoff: I offer Government's Exhibit 23 for identification in evidence.

The Court: Received.

(Government's Exhibit 23 for identification received in evidence.)

Mr. Rudykoff: That relates to count 12.

Q. Mr. McLaren, in Government's Exhibit 23 were the yards specified 125,000 yards? A. Yes, sir. 399

By the Court:

Q. All converted cotton goods? A. Yes.

Q. By converted cotton goods you mean goods that have been processed after they left the mill without bleaching? A. Yes, white.

Q. Not grey? A. Not in the grey.

By Mr. Rudykoff:

400 Q. Is that true of all the goods that were described in the document signed by you? A. I am sure it must be. We sold no grey goods to these customers. I would like to look at the papers to verify that.

The Court: Grey goods are goods coming off the loom prior to being bleached?

The Witness: In the raw stage, yes.

Q. Did you look at Government's Exhibit 24 for identi-
401 fication? A. Yes. It seems to be all of the same type. I do not know how extensively you want me to go into each one.

Q. Do they represent transactions had with the Daisart Sportswear, and are the documents appended thereto, do they relate to the same transaction? A. That is correct.

Q. Were those documents kept in the regular course of business? A. Yes, sir.

(Mr. Rudykoff hands Exhibit 24 to counsel.)

Mr. Siegel: Same objection for the defendant
402 Deeb.

The Court: Received.

Mr. Rudykoff: I offer Government's Exhibit 24 for identification in evidence.

(Government's Exhibit 24 for identification received in evidence.)

Mr. Rudykoff: That relates to count 18.

Q. 24 in evidence, Mr. McLaren, is in relation to 50,000 yards, is that right? A. Yes, sir. 403

Q. Thank you. Would you please look at Government's Exhibit 25 for identification and tell us whether that represents a transaction with Daisart and whether the documents relate to the same transaction and were currently kept. A. That is all correct.

Mr. Rudykoff: I offer 25 for identification in evidence. (Handing to Mr. Hart.)

Mr. Hart: No objection.

Mr. Siegel: Same objection.

The Court: Received. 404

Q. While we are waiting for that, a general question or two with regard to materials invoiced. In every case is it necessarily the same number of yards as ordered, or is it true that in many cases it was less than the order? A. I could not answer that question directly without consulting our records. If we undertake to sell someone a given quantity of 50,000 yards, we proceed to do it; some fifty-two or forty-eight, and in exceptional instances 5,000 yards may be used for finish. It could happen that a customer might casually order. That would involve a priority. 405

Q. As to the goods invoiced, they are delivered? A. Oh, definitely.

The Court: And paid for?

The Witness: Yes, sir.

Mr. Rudykoff: I offer Government's Exhibit 25 for identification in evidence.

(Government's Exhibit 25 for identification received in evidence.)

Mr. Rudykoff: It relates to count 19.

406 Q. As to Government's Exhibit 25 was the yardage ordered 150,000? A. Yes, sir.

Q. Have you examined Government's Exhibit 21 for identification? A. The language here on the photostatic copy is not clear, but it seems like the rest. It is our extension of the priority order.

Q. Does that refer to a transaction with Daisart Sportswear? A. Yes, sir.

Q. The documents relating to the same transaction all kept currently by the company? A. Yes, sir.

407 Mr. Rudykoff: I offer it in evidence, 21 for identification (handing to counsel).

Q. Have you examined—

Mr. Hart: I would like to do two things, but it is difficult.

Mr. Rudykoff: I would like to ask him to identify these records. You may examine them all, if you desire.

Mr. Hart: I do not want you to ask questions while I am looking at them.

408 The Court: Suppose you show him all of the exhibits up to 32 and ask the omnibus question. I assume there will be no question about that. And then counsel may desire to make some objection before they are received in evidence.

Q. Mr. McLaren, have you examined Government's Exhibits 26, 27, 28, 29, 30, 31 and 32 for identification? A. Yes, sir.

Q. Do all of the papers and documents attached to each

of those exhibits represent transactions had with Daisart Sportswear, Inc? A. Yes, sir. 409

Q. The documents attached to these exhibits, do they relate to the same transaction? A. Yes, sir.

Q. Were those documents kept by the company, that is Meadtex, in the regular course of business? A. Yes, sir.

Q. Were they kept currently at or about the time the transaction took place? A. By "currently" you mean in the normal course like all other orders? Yes.

Mr. Rudykoff: I offer said exhibits in evidence (handing to counsel).

The Court: That is about the exhibits up to and 410
including Exhibit 32 for identification.

Mr. Rudykoff: Yes, your Honor.

Mr. Hart: I have delegated the duty of looking them over to Mr. Siegel. You may proceed without them.

Mr. Rudykoff: Yes.

Mark this, please.

(Marked Government's Exhibit 33 for identification.)

Q. I show you Government's Exhibit 33 for identification. 411
Will you please describe what it is. A. These are photostatic copies of pages from our accounts receivable ledgers reflecting all of the charges and the payments or credits received on the Daisart accounts.

Q. Covering what period? A. February 19, 1945. The last sale was made on November 16, 1945. That was apparently the last transaction in the account.

Q. Does that account set forth all of the transactions had with Daisart Sportswear by Meadtex? A. Yes, sir.

Q. Were the items charged Daisart fully paid? A. Yes,
412 sir.

Q. Where do the charges appear with regard to the left or right side? A. The left side represents the charges and the right side represents the amounts of cash received or credits, if any?

Q. Those hold true with regard to both sheets? A. Yes, sir.

Mr. Rudykoff: I offer it in evidence.

The Court: This is a transcript, a photostatic copy of the transcript, of your account with Daisart Sports-
413 wear?

The Witness: Yes, sir.

Q. Those entries were made in the regular course of business of Meadtex? A. Yes, sir.

Q. At the time or about the time the transactions occurred? A. That is correct.

Mr. Hart: No objection.

The Court: Received.

(Government's Exhibit 32 for identification re-
414 ceived in evidence.)

Mr. Siegel: What is that exhibit?

The Clerk: 33.

Mr. Rudykoff: Ledger account.

The Court: For my own information, what is the total amount of the footing there for charges, and for the jury's information as well; the footings there for the year.

Q. For the year. A. The fiscal year of our company closed on August 31st. You mean of the two balances there representing shipments? 415

Q. The fiscal year ended August 31, 1945. A. August 31st.

Mr. Rudykoff: $198,101.42.

The Court: From February, 1945, to the end of the fiscal year?

Mr. Rudykoff: That is correct, your Honor.

The Court: The balance of the period from September 1st to November 16th.

Mr. Rudykoff: September, 1945, to November 16th 416
of the same year, a total of $71.418.68.

The Court: The yardages do not appear on that?

The Witness: No.

Mr. Rudykoff: In round figures about 70,000.

The Court: The aggregate figures $269,520.10.

Mr. Rudykoff: Thank you very much, your Honor.

May I suggest a short recess? It possibly will take 10 or 15 minutes.

The Court: Do yo desire the jury to be excused?

Mr. Rudykoff: I would say so, unless they prefer 417
to stay here.

The Court: Perhaps they could look at these exhibits that are on exhibit now. That might save time.

Did you total up the total yardages on these orders and the deliveries made under those orders?

The Witness: I have not.

The Court: These exhibits will be available for your inspection throughout the trial. If you care

to make notes at some later date, I suggest that you
418 examine them now.

Mr. Hart: For the cross-examination of this particular witness we would like to see them.

The Court: All right.

Mr. Siegel: Are these all of these exhibits?

The Court: I think Mr. Rudykoff went outside.

Mr. Siegel: Same objection for Mr. Deeb.

The Court: Same ruling.

Mr. Hart, do you have any objection to having these received in evidence?

Mr. Hart: I think they are in evidence.
419

The Court: No.

Mr. Hart: 22 to 31, I have no objection. 21 also.

The Court: They are received then.

(Government's Exhibit 21 for identification received in evidence. Government's Exhibits 26 to 32 for identification inclusive received in evidence.)

Mr. Rudykoff: With regard to 24, the count involved is 9.

420 Q. As to Government's Exhibit 21, Mr. McLaren, was the yardage involved 50,000 (handing to witness)? A. Yes, sir.

Mr. Rudykoff: Thank you.

The Court: The next is 26.

Mr. Rudykoff: As to 26, if the Court please, the count involved is 27.

As to 27, the count involved is 28.

Mr. Hart: A little slower. 26, that was count what? 421

Mr. Rudykoff: 27;

27 is count 28;

28 is count 34;

29 is count 35;

30, the count is 36;

31, the count is 37;

32, the count is 41.

Q. Mr. McLaren, as to Government's Exhibit 26, is the yardage 50,000? A. Yes, sir.

Q. With regard to Government's Exhibit 27, is the yardage involved 25,000? 422

Mr. Hart: I object to the expression "yardage involved." Yardage ordered.

Mr. Rudykoff: That is what I mean. I will confine it to that.

A. 25,000.

Q. As to Exhibit 28, is the order involved for 25,000? A. Yes, sir.

Q. As to Exhibit 29, is the order for 100,000 yards? A. Yes, sir. 423

Q. As to 30, is the order for 2,000 yards? A. Yes, sir.

Q. As to 31, is the order for 60,000 yards? A. Yes, sir.

Q. As to 32, is the order for 2500 yards? A. Yes, sir.

Q. With regard to all of the materials which were involved, were they finished materials? A. In this particular answer here—I am practically sure that everything is finished goods. I haven't seen all of them.

Q. Did you ever speak to George Smith? A. Yes.

Q. Do you recognize him? A. I doubt if I would. I met
424 him once.

Q. Where did you meet him? A. At my office.

Q. Did you have a talk with him? A. Well, it has always been my practice, among other things, to handle the credit department.

Mr. Hart: I object to what his practice is.

Mr. Rudykoff: I consent to strike it out.

The Court: Then you talked. What did you say and what did he say?

The Witness: I said, "Hello."

425 The Court: He says "Hello", too?

The Witness: Yes.

The Court: Then what did you say?

Mr. Hart: I object to your Honor leading the witness.

The Witness: As a matter of casual conversation, if you have no objection, what a powder bag was, purely as a matter of conversation. He told me what a powder bag was, but I still did not know.

Q. Do you recall seeing one by the name of Deeb?

426 Mr. Hart: Asked what a powder bag was?

The Witness: I recall having seen one. It was described to me by somebody at the office, and Mr. Deeb.

Mr. Siegel: I move the answer be stricken out.

The Court: Strike it out. Did you ever meet Albert J. Deeb?

The Witness: I do not think I ever did.

Mr. Rudykoff: That is all. You may inquire.

Cross Examination by Mr. Hart:

427

Q. Is it Mr. McLaren? A. Yes.

Q. Mr. McLaren, I believe you testified that Meadtex are converters, is that right? A. That is correct.

Q. I take it that you do not have your own mills, but you buy from mills? A. That is correct.

Q. During wartime there were certain restrictions placed upon your purchases, were there not? A. Yes, sir.

Q. In order for you to get goods from mills, you had to have priorities? A. That depends on the goods and the period involved.

428

Q. Take Daisart. In order for you to have orders from Daisart you had to extend these priorities to the mills, is that right? A. I would probably have to answer that with more or less—

The Court: Answer.

A. (Continued) If we were served with a priority during that period, if we had these goods in our possession and we had to use this kind of goods, we took that priority and we could use the priority which had been extended to the extent that anyone of the suppliers bills and the inventory is the same type, type No. 2.

429

If we were served with a priority and we could get the goods, we would pass the priority to the mill and we would get the goods.

Q. Was there some rule or regulation with respect to the placing of a priority when you placed the priority to a mill, would they give you an additional percentage for your own business?. A. I do not believe on this AA1 and 2. They were billed exactly for the yardage there.

Q. That is characterized as free goods? A. I am not
430 any WPB expert. I do not believe we got any free goods at the time we placed priorities.

Q. If they did give you goods in addition to the amount testified in the priority, the characterization of those goods is free goods, is that right? If that makes you think, I withdraw it. You have heard the expression free goods? A. Yes, but it can be used in many cases.

Q. Has it been used in connection with the excess over the amount specified in the priority and the amount actually delivered by the mill to the converter? A. In this in-
431 stance, I do not think so.

Q. Will you tell me what you do call the excess amount delivered by the mills over the amount specified in the priority order in any case? What do you call it? A. Somebody from the War Production Board could answer the question as to whether or not I had in my possession under certain periods Army priorities. But the mill would ultimately recount the goods, 100,000 to the converter, and then there might be a specification that the extra is to be used on certain orders; might have been honest withdrawals. I am directing you to the fact as to what you call free goods. Don't think I am trying to confuse you.

432

Mr. Hart: You mixed me up. I am very confused.

The Court: The question is withdrawn. Do not answer.

Q. You are making long speeches. Let me ask you this question, whether goods given voluntarily by a mill or pursuant to practice and shipped by both the textile company and the mill, in that case it is called free goods? A. I do not understand the question.

Q. An order is placed with a mill by a converter. A. A normal order? 433

Q. Yes, and additional goods are given by the mill to the converter in excess of the amount specified in the order; is the additional goods given to the converter characterized as free goods?

The Court: If you know?

The Witness: I do not think I know. It is a WPB question.

The Court: Have you heard the term "free goods" used in the trade? 434

The Witness: Yes.

The Court: What does it mean?

The Witness: As I understand, giving in excess.

The Court: Next question.

Q. Are you prepared to state as a witness in this case that you never received any free goods over and above the amount specified in the orders? Is that your testimony?

Mr. Rudykoff: That is objected to as immaterial.

The Court: Yes, the form is objectionable.

Mr. Rudykoff: I object to the substance. There is no materiality. 435

Q. Are you prepared to state that you never received any free goods?

Mr. Rudykoff: Same objection.

Mr. Hart: That should not be made until I finish my question.

The Court: Did you ever get any free goods from a supplier or the mill?

436 The Witness: With respect to these specific priorities?

The Court: Yes.

The Witness: There may be a point. I would like to answer completely.

The Court: The witness is doing his best.

Mr. Hart: Go ahead, answer completely.

The Witness: The answer to that is a different situation. These goods were to be charged under AA-1 and AA-2. Priorities had been passed to the mill at a given time. I do not remember the date when
437 the War Production Board came along with a regulation which withdrew that AA1 and AA2, amended by re-rating MM, in order to be valid. Now if such goods, if we had some in our processing, and they were not re-rated by the customer, they became free goods. I hope I answer the question.

Q. Do you know when the War Production Board came into existence? It came into existence after all these transactions were fully consummated, isn't that so? A. When?

Q. After all of these transactions had been concluded.

438 Mr. Rudykoff: That is not a fact.

A. The War Production Board came into effect?

Mr. Rudykoff: I object to it as collateral. That is not true.

Mr. Hart: May I move to strike out Mr. Rudykoff's answer to my question.

The Court: He objects to your question. He said it contained misstatement of fact. Is that the objection?

Mr. Rudykoff: Yes.

The Court: Tell us what it is. 439

Mr. Rudykoff: I object to the question. The War Production Board was in existence and later was succeeded by another board which I believe is still there.

Q. Do you know when this alleged order came out from the War Production Board which you say called for a re-rating? A. I do not know the date.

Q. Do you know whether it came out before or after these orders were shipped and paid for? A. I am speaking from memory. I am quite sure I am right. 440

Q. Have you got your books of the Meadtex? A. Yes.

The Court: You started to tell us your definition—

The Witness: Before we had completed all of these orders, yes, sir, I remember from memory, the first re-rating regulation came out. So it was toward the tail end of the deliveries on these orders, at which time we still had some undelivered.

Q. Did the order come out September 1, 1945? A. That would seem to be right.

Q. When was the last shipment to Daisart? A. By Daisart, I think. 441

Q. Pardon me. A. It is in the record.

The Court: It will appear on the ledger sheet.

A Juror: November 16th.

The Court: Is that the last entry that material was delivered, which is on Exhibit No. 33?

Mr. Rudykoff: November 16, 1945, is the last entry.

The Court: Is that the last entry on the top of
442 the page?

Mr. Hart: That is the bottom, your Honor.

Mr. Rudkoff: That is charged November 16th.

The Court: The last charge against the account.

Mr. Hart: The last amount on the bottom, on July 18, 1945.

The Court: May I look at it?

(Paper handed to the Court.)

By the Court:

443

Q. The entry on Exhibit No. 33 under November 9, 1945, which says "Due net 10-11", which means that is the amount due and payment made on October 11th? A. Their account billed, the due date of the bill to us.

Q. The delivery date, the last delivery date, would have been prior to October 11, then, 1945? A. Yes, on or before.

Q. How long prior? What was your extension of credit to this account? A. There was none.

Q. It was a cash account? A. That is correct.

Q. Your last delivery, according to your records, would
444 have been on October 11, 1945, is that correct? A. I do not know what this item means.

The Court: He does not know.

By Mr. Hart:

Q. At any rate, when you got free goods in connection with Daisart orders, did you get on all occasions when you passed priorities on to the mills, you got the goods, at

least the goods that Daisart sent to them? A. That is correct. 445

Mr. Hart: May I have Exhibit 21?

A Juror: Right here (handing to Mr. Hart).

Q. You understood my last question, did you not? A. Yes.

Q. Your answer was correct that on all occasions when an order was placed and they were transmitted to the mill, you at least got the goods or the quantity of goods that was ordered by Daisart and on some occasions you got additional goods that were characterized as free goods? A. Which 446 became free goods.

Q. Is that correct? A. Yes.

Q. On November 12, 1945, Mr. McLaren, Daisart ordered 50,000 yards of goods from your concern? A. That is correct.

Q. That is correct? A. Yes.

Q. What mill did you send that order to? A. I could not state from this information. It might have been one of many different suppliers.

Q. Do you know whether you got in addition to the 50,000 yards of goods from the mill, do you know whether you got any free goods? 447

Mr. Rudykoff: I must press my objection. I fail to see any materiality to this kind of question.

Mr. Hart: May I ask your Honor's indulgence for two more questions?

The Court: We will allow two more questions. We will allow counsel some latitude. He may have some reason for it.

Mr. Hart: I am entitled to have something subject to connection. Everything is—

448

The Court: Leave out the comment, and answer the question.

Q. Do you remember the question after the colloquy? A. I have to make true answers. Would you repeat it, please?

Mr. Hart: I forget it myself. I will ask you this question—

The Court: The reporter will read it.

449

(Record read.)

Mr. Hart: May I withdraw the question and rephrase it?

The Court: Yes.

Q. When you got this order for 50,000 yards from Daisart, you forwarded the mill, the name of the mill that you do not recall at the present time— A. That is correct.

Q. Do you recall whether or not you got any free goods from the mill in addition to the 50,000 yards ordered by Daisart? A. I do not believe we could have.

450

Q. You won't say you didn't? A. We may have got 51,000 yards. That is all.

Q. You got at least 50,000 yards? A. Yes, we ordered. They marked each order against us. As the goods came through, they were subtracted.

Q. What did you do with the 50,000 yards you got on the basis of Daisart's priority? A. This exhibit does not indicate it.

Q. What does it indicate? A. It indicates one shipment in the amount of 5000 yards.

Q. What became of the other 45,000 yards? A. When was that date on the re-rating orders? 451

Q. September 1st? A. 1945?

Q. 1945. A. I think our own records which we keep in our office would reveal that approximately 50,000 yards were shipped to Daisart, which has now included many different entries.

Q. You have produced here at the request of the United States District Attorney's office, or a representative of the United States Government a record of what you have decided constitutes all the shipments to Daisart?

Mr. Rudykoff: That is objected to. That is not 452
correct. There have been produced here all orders. He has testified that the bills annexed to the orders relate to the orders, but not necessarily that they constitute all the shipments made. We do not charge that. That has apparently no materiality.

Mr. Hart: I object to the United States Attorney informing the witness on the stand the point of the question. I do not think that that objection was taken in good faith.

Mr. Rudykoff: I object to injecting testimony that is not in the case.

The Court: Reframe the question, please. It is 453
improper. Ask him what papers he has been subpoenaed to produce.

Q. You brought your ledger sheet down here? A. No, this is a certified copy.

Q. It approximately represents the condition of your books as of the close of all transactions with Daisart, does it not? A. The ledger sheet, yes.

Q. It shows every item shipped and every item paid for,
454 doesn't it? A. That is correct.

Q. When you were asked to bring down the orders placed by Daisart and invoices showing the goods shipped in connection with these orders, you produced these photostatic copies, did you not?

Mr. Rudykoff: I object. There is no sheet. There has been no such request made.

The Court: Were you asked to produce all of your papers concerning transactions with Daisart?

The Witness: By this Court. I cannot remember
455 the language of the subpoena. I got the real sheets and records and came over. They have been given to different departments of the Government and other parties, whatever we had, and photostats that I did not bring down.

The Court: You have records in your office that will show the disposition of all shipments received by you from the mills?

The Witness: Yes.

Q. Will you produce them? A. I will produce anything you ask me to.

456 Q. I want you to look at your invoice attached to Exhibit 21, which is an order from Daisart for 50,000 yards, and tell us according to the invoice how many yards were delivered against that order.

Mr. Rudykoff: I object to the form of the question. It contains a suggestion that I do not think is quite correct. He is asked to confine himself to the invoice and then state if it contains all of the shipments made.

Mr. Hart: I object to these objections with the witness listening to the objection instead of looking at the invoice. 457

The Court: The witness can point that out.

Mr. Rudykoff: The invoice speaks for itself.

Mr. Hart: I asked what does it show.

The Witness: It is necessary—

The Court: That should be answered, yes.

A. This invoice represents—

The Court: Let him answer.

458

A. (Continuing) —a total of 10 rolls, totalling 5,000 yards supplied against this sale, dated February 13th.

Q. What became of the other 45,000 yards?

Mr. Rudykoff: Objection. There have been two questions asked, and there is no materiality to them.

Mr. Hart: I think that the jury has seen the materiality. I have seen it.

The Court: There will be no argument. The witness may answer, if he knows.

A. (Continuing) To my own knowledge—

459

The Court: Have you records that would show what happened to the other 45,000 yards?

The Witness: Yes.

The Court: Will you produce them?

The Witness: Yes, sir.

Q. I want to show you another exhibit, 24

Mr. Hart: 24 refers to what count?

460 Mr. Rudykoff: 18.

Mr. Hart: There is no order then for 24. That exhibit applies to count 19, Mr. Rudykoff?

The Court: Exhibit 25 applies to count 19.

Mr. Hart: 25. Thank you, your Honor.

Q. I show you Exhibit No. 25, and ask you, first, how many yards were ordered by Daisart from Meadtex, your concern? A. There is only one thing here before I answer that question. I have testified that as to that item I would like to see the confirmation of our sales note.

461 Q. I have asked you a question as to how many yards were ordered by Smith. A. I beg your pardon. I am sorry. Smith in this form was ordering 100,000 yards of style Dalton and 50,000 yards of style Elite.

The Court: That is a total of 150,000 yards.

I think we will take an adjournment at this time, if it can be arranged.

Mr. Hart: May I ask that this witness be instructed to bring down a statement of the mills from which he received the materials on each of these orders showing the quantity—

462 The Court: I will excuse the jury first and then hear you.

Mr. Rudykoff: May I approach the bench?

The Court: Yes.

(Discussion at the bench, off the record.)

The Court: No conversation with the witness.

The jurors are excused until tomorrow morning at 10.30, with the usual admonition of the Court not

to discuss this case amongst themselves or with anybody else. You are to keep your minds open 463
and free and clear for the reception of evidence. Form no conclusion as to the guilt or innocence of these defendants or any of them.

If anybody should approach you, promptly report the matter to the Court. Be here tomorrow morning at 10.30 promptly.

(The jury retired from the courtroom.)

The Court: Wait a moment. We will hear the application of counsel. You have an application to 464
make?

Mr. Hart: I should like to have the witness produce tomorrow the name of each mill that he placed orders covered by exhibits 21 to 32, with the quantity delivered by each mill in excess of each order.

The Court: How is that material, counsel? How does that affect the guilt or innocence of your clients or any of the defendants?

Mr. Hart: It affects them in this manner. He has testified as to orders given by my client.

The Court: Yes.

Mr. Hart: The orders have been produced. 465

The Court: Yes.

Mr. Hart: I want to show that there were not delivered the amount of yards specified in the order, but a considerably lesser quantity.

The Court: Not delivered by Meadtex?

Mr. Hart: Yes.

The Court: I can appreciate that deliveries that were not made by Meadtex, but to inquire into the

source of Meadtex's own deliveries, that would not
466 be any proof.

Mr. Hart: I assume every witness is called to the witness stand and his credibility is vouched for by the party calling him.

If we can establish that Meadtex had received merchandise, as they did, against these priorites, and failed to turn them over to the defendant, doesn't it affect his credibility?

The Court: What do you say?

Mr. Rudykoff: In the first place, the orders on their face indicate the amount ordered. We do not
467 claim, we do not care to urge, and we do not charge these defendants with having received anything more than they were billed for. For that same reason, it is quite irrelevant and is not material, but I assume for the purpose of this discussion that it was misappropriated by the witness, I submit that that has no relevancy whatsoever as to the guilt or innocence of these defendants.

The Court: Is that the purpose, that it might have a bearing upon the credibility of the witness?

Mr. Rudykoff: That, of course, is for the Court. I submit that not only is it so collateral and the
468 danger incident to it is so great that one must add to the other—

The Court: I think the Court will have to rule on these questions when they come up.

I think that this witness should produce tomorrow the records showing from whom you ordered merchandise on the orders of these defendants, or any of them, the quantities received from such mills.

Are those records available?

The Witness: Yes, but it would take some time with all the records in court. 469

The Court: I do not like to take testimony in the absence of the jury. You bring such records as you can to produce that information.

The Witness: I want to produce them to satisfy this gentleman.

Mr. Hart: I am easily satisfied.

The Witness: They have to go to work. It runs over the yardage. As the Court knows, there is a sheet showing this. You have a working loss, and you get back to the question of whether the loss was an even amount, depending on the type of tex- 470 tiles involved.

The Court: You have a shrinkage in some places and a stretching in others?

The Witness: Yes.

Mr. Hart: I do not think you have a shrinkage of 50,000 yards in one delivery.

The Court: Let him bring what records he can tomorrow. We will meet the question then.

Mr. Hart: Mr. Rudykoff has made the statement, he says we do not charge that they received the amount which was ordered. He does charge that—

Mr. Rudykoff: No. 471

Mr. Hart: Let me finish one statement. He does charge in one information that we misapplied and fully set forth the yardage which corresponds to the yardage ordered. Isn't that correct, Mr. Rudykoff?

Mr. Rudykoff: That is correct.

Mr. Hart: That is where we start with it.

Mr. Rudykoff: That, of course, is entirely beside
472 the point. If the Government has established that the defendant ordered certain materials and received only a lesser amount, the best that the Government has to do is to show the lesser amount.

The Court: I will ask this witness to produce such records as he can concerning the orders that you placed with the mills and the deliveries received under those orders.

The Witness: I am afraid that I cannot—I know I cannot give complete information on what I am requested to bring.

473 The Court: You bring in what you can.

Mr. Hart: Off the record.

(Discussion off the record.)

The Court: All right.

The Witness: O.K. I should have advice but did not get any. I do not know what I am supposed to bring down, to specify.

The Court: Don't you specify anything to the Court. You are asked to bring in, if you can, the orders that you placed, or the amount of orders
474 that you placed with the mills, and then the amount of yardage received for processing.

Mr. Hart: There is one thing that I think should be clarified. I have no direct proof of the complete shipments to Daisart here. There will be no question of the amount of the amount of the deliveries.

The Witness: I am going back to the office. I hope somebody is there. I cannot do it by myself.

If I can take our records of the shipments of Daisart, I think our sales notes will indicate that

we have fulfilled all of those shipments with certain shipments which came from the MM change. 475

I do not want to bring down a lot of papers that do not mean anything.

The Court: I did not see all of these exhibits. Have you photostats of those in evidence that show the delivery, the yardage?

Mr. Rudykoff: I cannot say that we have used all photostats. The invoices that are in evidence, there are invoices which were rendered by the company to Daisart. I think that, together with the ledger sheet, probably will give you all the information that I possess. 476

The Court: These are not in evidence?

Mr. Rudykoff: No.

I do not want to follow the path that is outlined by the defendants, because that to my mind is invalid and reversible error. It contains a lot of material which the Government is not prepared to show was eventually diverted, the fact that the diversion is something more than the invoices. We do not want to prejudice the defendant by the fact that we are bringing the production in—

Mr. Hart: More was delivered to defendants than shown by the invoices in evidence. 477

Mr. Rudykoff: I would think offhand that is so.

Mr. Hart: I ask that it be shown. I want the exact amount shown by the witness, because it is not correct. The invoices introduced in evidence represent what was actually delivered to Daisart, not one yard more. If Mr. Rudykoff has evidence that additional yardage was delivered, I waive any desire to exclude the admission of it. It is not a

constitutional ground. I can waive it on behalf of
478 my client.

I want the jury to know the exact yardage that was delivered to Daisart.

The Court: Suppose we excuse the witness. If you counsel will come in my chambers, perhaps we can spend a few minutes in there.

(Adjourned to November 19, 1947, at 10 o'clock a.m.)

New York, November 19, 1947, 10:30 a.m.
479

TRIAL RESUMED

Mr. Rudykoff: Is Mr. McLaren there?

The Bailiff: He hasn't arrived as yet. (Discussion.)

The Court: I think there is Mr. McLaren now.

DONALD MCLAREN resumed the stand.

480 *Cross Examination by Mr. Hart* (Continued):

Q. I believe, Mr. McLaren, I was questioning you yesterday concerning Exhibit 25 which shows an order for 150,000 yards placed by Daisart with your concern Meadtex, and I ask you to look at the invoice and tell the jury just what part of that 150,000 yards which were ordered were actually delivered to Daisart.

Mr. Rudykoff: I don't want to appear captious but I think perhaps it might be advisable first to

have the witness state whether the invoices represent all the delivery made. 481

The Court: Suppose we let the witness answer.

Mr. Hart: May I object to this prompting of the witness.

The Court: The witness will answer the question as put.

A. Well, I am pausing here for a minute because this is an order that was sent to us by Daisart. Now I would work from our signed sales note which accompanies these. I have here a working copy of that signed sales note which we use for our records so I can more readily and definitely 482 identify—

The Court: You use any papers that will refresh your recollection and assist you in giving the information that counsel want.

A. (Continuing) The first invoice I have here before me—

Mr. Hart: If the Court please, may I ask that the witness answer the question? Let him refresh his recollection from whatever he wants but I don't want any speeches to encumber the record. 483

The Court: I don't think the witness is making speeches. I think he is trying to be helpful.

Mr. Hart: I object to that. It is up to the jury to determine whether he is trying to be helpful or whether he is stalling on the witness stand.

The Court: I don't think your comment is correct. He gives me the impression he is trying to be helpful. It will be up to the jury to judge.

Mr. Hart: I would like an answer without any
484 speeches.

By the Court:

Q. Now, Mr. McLaren, you have before you Exhibit 25 which contains papers purporting to be an order for 150,000 yards of cotton goods. Did you in fact get from Daisart Sportswear Inc. an order on that day for 150,000 yards of cottons? A. The dates are slightly different, but they are. Our sale is dated March 8th covering two styles. One of our sales notes is dated March 7th and the other is
485 dated March 12th.

Q. How much was the order of March 7th for? A. The order of March 7th was for about 50,000 yards.

Q. And the order of March 8th was for how much? A. About 100,000.

Q. So that the two orders made a total of about 150,000 yards? A. Yes.

Q. What quantity, what yardage was delivered by your company to Daisart Sportswear on those orders? A. On the order for 50,000 yards we made deliveries of 50,257. On the order for 100,000 yards there is 100,477 yards.

486 *By Mr. Hart:*

Q. Now, Mr. Witness, his Honor asked you how much or how many yards Daisart ordered from you on March 8, 1945. I show you the order dated March 8, 1945, and tell us how much they ordered on that date, as appears from that order? A. A total of 150,000 yards.

Q. And not 50,000? A. One hundred plus fifty of two different styles.

Q. A total of 150,000 yards? A. That is correct.

Q. Will you look at the invoices attached to it and tell us how many yards were delivered according to the invoice? 487

Mr. Rudykoff: That I object to because it contains a negative—

The Court: You will have an opportunity on redirect to bring out anything you desire.

Mr. Rudykoff: All right. I withdraw the objection.

Mr. Hart: In the meantime, may I look at the paper from which the witness said he refreshed his recollection? 488

The Court: Yes.

The Witness: I am working on this one.

Mr. Hart: I would like to have it.

The Court: You have asked a question and he needs that paper. When he is through you can look at it. You have asked a question. Let him answer.

Mr. Hart: The question is based upon the invoices that have nothing to do with the paper which he says he refreshed his recollection from.

The Court: Don't get into repartee and argument. You asked a question. Let the witness answer and then you may look at any paper that he looked at to refresh his recollection. 489

A. These invoices here total the amount of 100,477 yards applying against the 100,000 yards of Style Dalton.

Mr. Hart: I move to strike out the latter part of the answer. The question is, what do the invoices attached to the order show as far as the order was concerned.

Mr. Rudykoff: I think—

490 The Court: The motion is denied. The answer may stand.

Q. Mr. Witness, when you answered my question, did you total the yardage set forth on the invoices attached to Exhibit 25? A. I checked off the amount of the invoices against our copy of the sales record which calls for the same quantity with respect to the 100,000 yards.

Q. Does this show the invoice attached to Exhibit 25 which is an order for 150,000 yards, that there were actually delivered according to these invoices 100,477 yards? A.

491 That is correct.

Q. Where are the invoices for the remainder? A. I can only give you carbon copies.

By the Court:

Q. That is all right. You have now your official records? A. Yes.

Q. You are taking the carbon copies from the working papers of your office? A. Yes.

The Court: All right, you may do that. Suppose

492 we separate these.

The Witness: I am afraid I will get all messed up if I do. There are only two invoices involved.

The Court: The witness produces sales records—pages 1 and 2—

The Witness: Yes, sir.

The Court: And invoices dated April 27, 1945, for a total of 32,814 yards.

Mr. Hart: May I see that?

The Court: Wait until he finishes his answer and then you may look at it, Mr. Hart. 493

32,814?

The Witness: Yes, sir.

I have here before me another invoice dated May 2, 1945, for a total of 17,445 yards.

The Court: That makes a grand total of 50,259 yards?

The Witness: Yes, sir.

The Court: Now, were you paid for that yardage by Daisart Sportswear?

The Witness: Yes, sir. 494

By Mr. Hart:

Q. Can you show us a payment on the ledger? A. I can show you the charge and I think the payment.

Q. Can you show us a receipt for any of this material?

The Court: You have asked a question. Supposing we get the ledger and follow it through.

Mr. Hart: May I conduct my own examination? The Government was permitted to present its case without interruption and subject to connection—

The Court: You will be permitted to, counsel, but in order to clarify this matter for the jury I think at this time it is appropriate to look at the ledger sheet so that the witness may know what he is referring to. 495

Mr. Hart: May I note one exception? I respectfully except to your Honor's conduct of this trial and I make the observation and exception based upon the fact that the United States Attorney was permitted to try his case without interruption and

was permitted to offer exhibits in evidence subject
496 to connection without inquiry or query, without questions asked by the Court, and that the Court is constantly questioning the witness in a manner to contradict what I want to bring out on cross examination.

The Court: The Court is only trying to clarify the evidence for the jury. The objection is overruled. And with respect to the Court's demeanor, the Court will say that the jury is not to be influenced in any way by the comment.

Mr. Hart: May I say it is not indicative of any
497 opinion—

The Court: I will give the jury appropriate instructions at the proper time.

Mr. Hart: Thank you, your Honor.

By Mr. Hart:

Q. Now will you point out the two items which you have identified on these copies which you have produced? A. All right, sir. May I see them, please?

Q. Yes. A. Can I point this out to you? You will note that this invoice of April 27th is in the dollar amount of
498 $11,086.21, April 27th. You will see here that that is posted as a sale in our accounts receivable in the amount of $11,086.21.

With respect to the next item, the date is May 2nd. The dollar amount of this invoice is $5,893.79, and is an appropriate posting of the sale there.

Q. When was that delivery made? May what? A. The invoice is dated May 2nd.

Q. May 2nd? A. Yes.

Q. And when was it paid? A. Well, that I would have to puzzle out if I can. The symbol F—there was an item we received here on the same day in the same amount. Let me see the next one, please. 499

Mr. Rudykoff: Would you state when the item is—

The Witness: The invoice is dated April 27th in the amount of $11,086.21, was credited on our accounts receivable ledger by a payment on the same day. Now with respect to item—

Q. Wait a minute. How much was the payment on that day? A. Why, this would appear to me as though that was the check. 500

Q. For how much? A. For the entire amount.

Q. How much is the amount of the check? A. $11,086.25 it appears to be from here.

Q. I direct your attention to the fact that then directly opposite $11,086.21, there is a payment of $11,099.30, unless I am not looking at it correctly. Am I correct in that? A. No; you are not. There is the amount here. Look at the symbol of—

Q. I am saying that directly opposite the $11,086.21 on the same line there is a payment of $11,099.30, is that correct? On the same line. A. It is on the same line. 501

Q. Then three lines below—

The Court: Wait. The witness wanted to say something.

Mr. Hart: Well, I asked a question.

The Court: Please be respectful to the Court when I speak.

Mr. Witness, what did you want to say?

The Witness: We have one item representing
502 sales and the other representing payments. Now the fact that they are on the same line does not relate one to the other. To illustrate, we might ship a hundred and a hundred and a hundred, which would be a total of three hundred. Then if we got a payment of $300 for the three bills, that payment would be on the first line.

By the Court:

Q. You mean that the lines of the credit and debit entries are not necessarily parallel? A. Yes, sir.

503 Q. You might have three separate debit charges covered by one single credit? A. Yes.

By Mr. Hart:

Q. Can you tell me what that $11,099.30 was in payment of? A. May I tell it my own way?

The Court: Yes, you can do it in your own way.

A. The bookkeeping on this account was a little bit difficult in view of the fact that no extension of credit was involved. As orders were placed deposit checks were left with us in various amounts.

504 *By the Court:*

Q. You mean you were paid in advance? A. As a deposit, and the balance was cash before delivery. So therefore these deposits would accumulate and charges would accumulate.

Now to answer that specific question, we tied this up in our bookkeeping records by symbols relating to the payment of sales. The symbol on this item in the collection column is F. The same symbol by the way as appeared on

the previous $11,086.25 item. But the corresponding symbols on the charges run into what is at a glance considerably in excess of that. Now this would have to be broken down to show that this payment was the balance in excess of deposits already received to offset the billing on this side. 505

Q. Mr. McLaren, does that ledger sheet which is in evidence contain the entries of all the debits made to the account of Daisart Sportswear Inc.? A. All the charges, yes.

Q. And does it contain entries of all the payments made by them? A. Yes, sir.

Q. And doesn't the account balance? A. Yes.

Q. Were you finally paid in full? A. Yes, sir. 506

Q. So that your company was finally paid by Daisart? A. For all the goods delivered, yes, sir.

By Mr. Hart:

Q. And does the total amount of goods specified in the orders given by Daisart Sportswear— A. Are we talking about—

Q. His Honor has spoken of totals and of all the charges. I am asking you whether or not your record shows whether all the orders or all the yardage was actually delivered and paid for? A. You are now speaking of orders and not invoices? 507

Q. I think I said orders.

By the Court:

Q. What is the difference between an order and an invoice? A. An order is what we describe as a sales note which is a contract for future delivery and an invoice represents the actual sale at the time the goods are billed.

Now to answer your question, sir, all of the orders that we
508 confirmed to Daisart Sportswear Inc., were not delivered to them.

By Mr. Hart:

Q. When you say all of the orders were not delivered, you mean all of the material was not delivered? A. All of the material covered by the total of all of the orders was not delivered to Daisart Sportswear, Inc.

Q. Mr. McLaren, at some time or other you gave to the United States Attorney orders which were received in
509 evidence specifying yardages which Daisart Sportswear desired to purchase from you. Now referring to those orders which are now in evidence and the yardage specified on there, was all of the yardage specified on these orders delivered to Daisart Sportswear Inc.? A. Assuming that you have in possession all of the orders that are in existence, and I have no way of knowing that, I can only speak from my own records,—I repeat all of the material covered by all of the orders was not delivered to Daisart Sportswear.

Q. Did you give these orders to the United States Attorney's office? A. These orders were—these photostatic
510 copies were given by my firm at the request of a number of different Government agencies.

Q. You were handed these orders yesterday and you were asked to examine them and then they were offered in evidence? A. Yes, sir.

Q. Referring to these orders that are in evidence, and the yardage specified, was there a lesser amount, was the same amount, or a greater amount delivered to Daisart Sportswear, Inc.? A. I have to qualify that because I am not sure that the total of all of the sales notes and or

confirmations are the same as in our records. I have no way of knowing whether or not you have all of the orders we have confirmed. 511

Q. Mr. McLaren, all I have are the orders brought here to court by the district attorney, handed to you before they were offered in evidence. A. And I said each one—

Q. You have seen these orders. A. And I said each one is correct but you are asking me about the total and I have not had an opportunity to take the total of those and the total shown in my own records.

The Court: You say the total shown in your own records. You mean the total shipments? 512

The Witness: No, the total orders. We may have sent fifteen sales notes to Daisart Sportswear and maybe in the exhibits there are twelve sales notes. I don't know. Maybe two or three were lost. I would have to check each one to answer the question properly.

Q. Will you look at Exhibit 31 and tell me how many yards were ordered? A. 50,000 yards of Style Dalton, and 100,000 yards of Tacoma.

Q. Tell us according to the invoice attached how many of those 150,000 yards you delivered? A. Is this the one 513 I saw before?

Q. Right. Will you look at the invoice? A. I know; I have to check it against my worksheets.

Q. May I ask you to look at the invoice?

The Court: If you have to refer to your records you may.

(Mr. Hart starts to take papers from witness box.)

The Witness: Do you want me to answer?

514 The Court: You may refer to any paper that you need to refresh your recollection or memory in order to respond to any questions asked you here if you do not remember independently of your records.

Q. Do you understand the question? I ask you to look at the invoice and tell us what the invoice shows with respect to the yardage delivered. Do you have to look at any other paper? A. Oh, no. I have an invoice before me of August 31st, 1945, which calls for a total of—99 rolls it looks like,—It is rather obscure—of style Dalton.

515 The total amount of that invoice is $15,778.30.

Q. Mr. McLaren, you heard me ask you to tell us what yardage of the 150,000 yards that were ordered were delivered. Will you tell us how many yards the invoice shows were delivered? A. I would like to make a correction, I said this was for 50,000 yards of Dalton and 100,000 of Tacoma. You bulked them together as 150,000 yards of one style. This invoice I have before me calls for 49,706 yards of style Dalton—calls for a total of 49,706 yards of style Dalton.

By the Court:

516

Q. Was the balance of that order delivered, 100,000 yards? A. I will have to check my records.

Mr. Hart: May I get an answer?

The Court: Excuse me until I get an answer to my question.

Q. Was the balance of that order delivered? A. Yes.
Q. Tell us what date and what was the quantity. A.

On our records these are two orders, not one, and I have to speak from that standpoint. I will try to answer this question quickly. 517

With respect to this exhibit, the order was given to us by Daisart, calling for—that is a mistake. That is not fifty and a hundred thousand yards; it is fifty and ten thousand yards.

By Mr. Hart:

Q. I beg your pardon? A. These orders are for fifty and ten thousand yards, not fifty and a hundred thousand yards. 518

Q. Well, you said a hundred, didn't you? A. If I said it then I made a mistake.

Q. All right. A. On the basis of the exhibit here, the one invoice shows against the 50,000 yards as I said before, 49,706 were delivered.

With respect to the other style, Tacoma, Daisart's order to us and our sales note to him calls for 10,000 yards. Our invoice—it looks like August 28th—called for 10,173 yards.

Q. May I see your invoice? A. (Hands paper.)

Q. Where is it? A. It is attached.

Q. Will you show me where the 10,000 yards appear on this invoice? A. This one is the 50,000, which is 49,706. 519 This one here is 10,173.

Q. So when you said 100,000 were ordered before, that was a mistake?

Mr. Rudykoff: Well, the exhibit speaks for itself.

The Court: The paper speaks for itself.

Mr. Hart: This is a question of the witness testifying.

Mr. Hart: I object to what he did with respect
556 to any other customer.

The Court: First let him tell us what he did with respect to this customer.

I wrote him a letter.

The Court: What did you do, cancel the order or leave it stand?

The Witness: I wrote him a letter.

Q. Do you have the letter here? A. I have the letter here.
557 Q. Is that a duplicate original of the letter? A. Yes.
Q. And was the original sent to Daisart? A. Yes.
Q. Would you produce it? A. Here it is (handing).
Q. Now this has been in your possession at all times, is that correct? A. Yes, sir.

Mr. Rudykoff: I offer it in evidence.

Mr. Hart: No objection.

Mr. Siegel: No objection.

The Court: The same ruling, counsel.

(Government's Exhibit 36 received in evidence.)

558

The Court: It is a letter dated—

Mr. Rudykoff: September 28, 1945.

With the Court's permission, this is Exhibit 36, letter dated September 28, 1945. At the top appears underscored in capitals, RRRR.

Q. What does that mean? A. Registered mail, return receipt requested.

Mr. Rudykoff (Continuing reading): Underneath that TT: M. Smith (reads Exhibit 36 to jury). 559

Q. Now did you get a response to that letter? A. Yes.

Q. And what was the response? A. Do you want me to read it?

Q. May I have it, please? A. (Witness hands paper to counsel.)

Mr. Rudykoff: Mark this, please.

(Marked Government's Exhibit 37 for identification.) 560

Q. Government's Exhibit 37 for identification, has that been in your possession up to this moment? A. Yes, sir.

Q. Did you ever show that to me? A. No, I don't think so. Not that I recall.

Mr. Rudykoff: I offer this in evidence.

Mr. Hart: No objection.

(Government's Exhibit 37 for identification received in evidence.)

561

Mr. Siegel: The same objection for the defendant Deeb.

The Court: The same ruling.

Mr. Rudykoff: May I read this, your Honor?

The Court: Yes.

Mr. Rudykoff: This is a letter on the stationery of Daisart Sportswear, Inc., dated October 10, 1945, addressed to Meadtex Fabric Corp., 440 Fourth Avenue, New York City, (reads Exhibit 37 to jury).

Mr. Rudykoff: You may inquire.

562 The Court: Any further cross-examination?

Mr. Hart: Just a moment, Judge.

Recross Examination by Mr. Hart:

Q. This last letter—

The Court: Exhibit 37.

Q. —Government's Exhibit 37, at the time that was received by you, you had already obtained, had you not, the

563 hundred thousand yards from the mill? A. I must have.

Mr. Rudykoff: I object to it as immaterial.

The Court: Overruled.

A. I must go by the records I have with me. I cannot tell.

Q. At the time you sent Exhibit 36, you had the hundred thousand yards from the mill? A. I can't testify to that fact without checking the records. I think we must have had most of the goods but it could have been possible that some of the mills has asked us for rerating, and I can only testify to—

564 Q. At any rate, you can't say that you did not have this hundred thousand yards? A. No, I certainly cannot.

Mr. Hart: That is all.

Mr. Rudykoff: That is all, Mr. McLaren, thank you.

The Court: Do you want to take a recess at this time?

Mr. Rudykoff: I should like to do so in order to accommodate certain people who are waiting. I think I will have to excuse some.

520 The Court: The paper speaks for itself. The witness said he made a mistake. What does the paper show?

Mr. Hart: It shows ten and fifty.

The Court: Ten and fifty; so the witness did make a mistake.

Q. I direct your attention to Exhibit 29 which consists of an order and invoices, and ask you how many yards Daisart ordered. Under that order, how many were ordered? A. 100,000 yards—

Q. How many were delivered? A. —of our style Comet.

521 Q. Well, according to the invoice how many were delivered?

The Court: Wait. You asked a question. You asked him how many were delivered on that order.

Mr. Hart: According to the invoice.

The Court: Let's have the question answered.

By the Court:

Q. How many were delivered under that order of 100,000? That is Exhibit 29. A. (Witness examines papers.)

522 Q. All right, are you ready with the answer? A. Yes. Against that order for 100,000 yards of Comet No. 1, there was made a total delivery of 33,801 yards.

By Mr. Hart:

Q. A difference of about 67,000 yards? A. Yes, sir.

Q. What did you do with the 67,000 yards?

The Court: We will sit until one o'clock and after two we will sit until four-thirty or a quarter of five. I don't want to inconvenience the jurors. 565

The Witness: May I have a receipt for these papers?

The Court: There is a record made here. Mr. Rudykoff will have them.

Mr. Rudykoff: You get in touch with me and I will have them for you.

The Court: We will take a ten-minute recess.

(Short recess.) 566

Mr. Rudykoff: Mr. Wolfe, please.

Joseph Wolfe, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

Q. Mr. Wolfe, what is your business? A. I am a lace and linen jobber and also a free lance salesman.

Q. How long have you been engaged in the lace business? A. About fifteen years. 567

Q. And was that your business in 1944 and 1945? A. Yes, sir.

Q. And sometime in 1945 did you attend at the place of business of Daisart Sportswear? A. I did.

Q. And do you recall the first occasion? A. Yes, I do.

Q. Approximately when was it? A. I think around May of 1945.

Q. At that time whom did you see? A. A gentleman by the name of Jeff Baker.

Mr. Rudykoff: That is objected to as immaterial.

The Court: I will permit the answer. 523

A. I will have to explain that.

Q. Go ahead, as long as you tell us what you did with it, I don't care. The question is what did you do with them? A. We discussed yesterday afternoon along some time in September there was a regulation of the War Production Board or its successor, that required that all of these high-rated orders had to be re-rated MM, in order for the priorities to be valid. As I remember the effective date on that was September 30, 1945. On September 28th—incidentally, that regulation also provided that if the goods were not rerated they became free goods and could be sold free of priority. 524

The Court: Delivery of that thirty-odd thousand was what date?

The Witness: The last delivery was made on September—well, that was a small yardage—September 19th or 21st was the last deliveries against that order.

Q. Is that the answer? A. Yes, sir.

Q. What did you do with the 66 or 67 thousand yards? 525
A. Since they were goods that we could dispose of as free goods, we sold those goods plus goods involving another style to customers of our selection. Incidentally some of those goods were sold at a later date under a new contract to Daisart Sportswear, Inc.

Q. Did you not include them in the 33,000? A. No, I did not include them.

Q. Where is the invoice for the goods that were sold at a later date after September?

Mr. Rudykoff: That is objected to. It is apparent
526 now that this line of questioning is utterly immaterial.

The Court: I don't see that it is relevant.

Mr. Hart: He has made a statement that there were goods sold subsequent to September to Daisart.

The Court: Your client is charged only with the ones specified in the indictment. I think it is immaterial and irrelevant at this time.

Mr. Hart: Does your Honor sustain the objection?

The Court: Yes, I will sustain the objection.

527 Mr. Hart: Exception.

The Court: If it becomes relevant later on we will permit you to call the witness.

The Witness: I may have the facilities to answer your question.

Mr. Hart: Shall I accept the witness' ruling?

The Court: I will permit this one answer. I don't want the trial to get into irrelevant matters. I will allow you some latitude, counsel, but I don't want to get into irrelevant matters.

Mr. Rudykoff: I will withdraw my objection with
528 the understanding that I do not indicate that this line of questioning is material. I still advance the proposition that this is an immaterial inquiry but if it is going to aid matters I will withdraw it at the present time.

The Court: The witness says he can answer it.

The Witness: I think I can.

Q. I am asking you if there was any goods delivered to Daisart after September? A. Yes, I think I can establish that—

Mr. Rudykoff: Is that with regard to this order or some other order? 529

Mr. Hart: I mean in addition.

A. Now a second order would be a non-priority order. I think I have it here.

Mr. Rudykoff: May I ask that the question be repeated?

The Court: I think the witness understands the question.

Mr. Rudykoff: Well, all right.

The Court: If he doesn't, he will indicate it to us. 530

A. The date that I was referring to on this rerating under P. W. B. regulations was late September. I have here before me our working copy of our sales note dated October 11th for a total of 35,000 yards of either our style Comet or our style Rocket. This is not a priority order.

Q. Do you have the order there? A. I have our work sheet on the order.

Q. Do you have an order from Daisart for that? A. On his form?

Q. Yes. A. I am not even sure that we have one. I will have to check my records on that. 531

Q. Well, let's get this straight. You did get from the mills on Exhibit 29—you did get from the mills on the priorities of this defendant 100,000 yards, is that correct? A. No, I would have to check my records a little further. Subsequently I would think that is correct.

Q. You only delivered to the Daisart 30,000? A. That is correct.

Q. As against this order? A. Yes, sir.

Q. Surely (handing). A. 1945.

574 Q. At or about that time did you buy some merchandise from Daisart? A. I did, sir.

Q. Where did you have your talk with regard to that purchase? A. In Mr. Smith's office.

Q. And what was the nature of the merchandise? A. May I look at this?

Q. Surely. A. This particular merchandise is known in the trade as a No. 185 drill in a 56-inch width finish.

Q. In what condition was it with regard to whether it was in a grey or finished state? A. It was finished goods.

575 Q. And in what way was it finished? A. It was bleached white.

Q. What talk did you have about the price? A. Well, if I recall, Mr. Smith wanted for this goods two cents more than I paid and we made an agreement that I would take 40,000 yards of it at 57 cents.

Mr. Hart: I didn't hear the last part.

(Answer read.)

The Court: Per yard?

The Witness: Per yard, your Honor.

576

Q. Did you pay the amount resulting from that arrangement? A. Yes, sir, I did.

Q. Do you recall how much you paid in all for that particular item of merchandise? A. I cannot recall the exact amount.

Q. Very well. Did you get an invoice? A. I did not.

Q. Did you have any talk about any invoice? A. I did, sir.

Q. And with whom did you have it? A. Mr. Smith.

Q. The 67,000 yards which were obtained, were ob-
532 tained on the basis of the defendants' priority? A. We extended the priority to the mill, the mill delivered the goods to us on the priority, and I assume they delivered all. However, if they had asked us for a rerating after they had delivered eighty, then they might not have delivered the additional twenty to us.

Q. When did you get the delivery from the mill on this shipment?

Mr. Rudykoff: I object to this at this time. We are prolonging—

533 The Court: If he is able to tell us when he may do so.

A. I can't tell. It seems to me these goods probably took forty or fifty days to finish so I assume it must have been forty or fifty days before that date.

Q. Forty or fifty days before the order was placed? Forty or fifty days before the order was placed by the defendant? A. No, I can't answer that question.

Q. If the order was placed in June would that refresh your recollection as to when you received the merchandise from the mill? A. On this specific—

534 Q. On this specific item. A. Not necessarily, no.

Q. Well, I asked you to bring your records showing the quantities and dates of items you received from the mill. Did you bring them? A. I brought as much as I could. I left here at five o'clock and I came here at half past ten. I brought down a lot of information. Our filing clerk had done and I was unable in that short space of time to bring down every free sale—

Q. Mr. Witness, I will ask you the question again. Did

Q. What did you say and what did he say? A. I told him that I would like to have this goods billed, and Mr. Smith told me it would cost me two cents extra a yard if I had it billed. 577

Mr. Hart: I can't hear the witness.

By the Court:

Q. You said you told Mr. Smith you would like to have it billed? A. That is right.

Q. Mr. Smith told you if you had it billed it would cost you two cents more a yard? A. That is correct. 578

The Court: Speak up louder.

Q. What was the further conversation? A. I told him under those conditions I couldn't sell it because all I was working on was two cents per yard profit, and if I couldn't get a bill at the same price I couldn't take the bill, that he didn't have to give me the bill.

By Mr. Rudykoff:

Q. Did you agree to take the merchandise without a bill? A. I did, sir. 579

Q. And did you take the merchandise without a bill? A. I did, sir.

Q. I direct your attention to a part of Government's Exhibit 38 for identification—

Mr. Rudykoff: I would like to have it marked 38-A, please.

(Marked Government's Exhibit 38-A for identification.)

you bring down the records showing when you received the yardage specified in this order? Exhibit 29, from the mill? 535

Mr. Rudykoff: That is objected to as repetitious.

A. I did not.

Q. You did not bring it down? A. No.

Q. And you say the time consumed generally is forty or fifty days after an order is placed? A. No, no, I would like to withdraw that.

Q. Withdraw it? Is that a mistake on your part? A. Maybe it wasn't complete.

Q. Is there— 536

The Court: Wait a moment. He wants to make a correction.

A. (Continuing) Under normal conditions when we place an order with a grey mill, it might be for spot delivery; it might be one month, two, three, four, six months, all depending on the circumstances existing at the time.

Q. This merchandise on that particular order was ordered in June. If they were delivered before September you would have had to deliver them to this defendant— 537

Mr. Rudykoff: That is objected to. That is entirely immaterial.

Mr. Harf: He has testified about a regulation which came into effect the latter part of September, which freed all of this goods. I want to show this merchandise was delivered to him before that regulation came into effect.

The Court: How is that material?

Q. There are certain figures appearing on 38-A. Will you
580 tell us the circumstances under which they were placed on this particular sheet of paper? And who was present at the time? A. These were given to me by Mr. Baker. They describe bale numbers and yardage of goods.

Q. And where was it given to you? A. It was given to me at Mr. Smith's place.

Q. And who was present at the time? A. Mr. Smith and Mr. Baker.

Q. And are the yardages and the bale numbers which appear on that slip the same as the yardages and bale numbers you agreed to buy from Daisart? A. Yes, sir, they
581 are, sir.

Q. And what portion of the 40,000 yards is represented by that particular slip, Government's Exhibit 38-A? A. 9,945 yards.

Mr. Rudykoff: I offer Exhibit 38-A in evidence.

Mr. Hart: Does it appear whose handwriting that is?

Mr. Rudykoff: I will be glad to ask him.

Q. Do you recall who wrote it, if you saw who wrote it? First, do you recall seeing the writing? A. Yes, I do.
582 Q. And did you see who wrote it? A. Mr. Baker.

Mr. Hart: I object to it if the Court please as not binding on the defendant.

The Court: It is received.

Mr. Siegel: Same objection on behalf of the defendant Deeb.

(Government's Exhibit 38-A for identification received in evidence.)

538 Mr. Hart: It is material to show where these goods went and to affect the credibility of this witness.

The Court: I think you have gone far enough into that field at this time. We are not going into the trial of a collateral issue in this case. This man is not on trial charged with a violation of these regulations. While you may show that he did, if you can, violate some of these regulations for the purpose solely of affecting his credibility, we are not here trying this witness.

539 Mr. Hart: That is my purpose—credibility. He said on September 30th a regulation came into effect and he accounts for the 67,000 yards which were missing by saying they were freed. If I can show they were delivered by the mill to him while that regulation was in force, those goods should not have been delivered by him.

The Court: The objection is sustained and you are bound by his answer on that matter. Proceed to something else.

Q. Isn't it a fact that these goods were in the dyers in
540 Hoboken in August?

Mr. Rudykoff: I object.

The Court: He may answer.

A. I can't tell without consulting my dyers records.

Q. Do you recall the dyers strike in Hoboken?

Mr. Rudykoff: Objection.

The Court: Sustained.

The Court: Received.

583

Q. Now what was done, if anything, with the bales which are described in 38-A? A. Mr. Smith's place sent this goods on the floor to an account that I sold it to, namely, Murray E. Schwab, at 220 Fifth Avenue. When I say sent it over, it was sent over by truck.

Q. And did you render an invoice to Mr. Schwab? A. I did, sir.

Mr. Rudykoff: Mark this 38-B, please.

(Marked Government's Exhibit 38-B for identification.)

584

By the Court:

Q. Do you have an office, a place of business? A. Yes, sir, your Honor.

Q. This shipment was not made to you, it was made direct to Schwab? A. That is right, your Honor.

By Mr. Rudykoff:

Q. Were you paid the price indicated on this invoice? A. I was, sir.

585

Mr. Rudykoff: I offer it in evidence.

Mr. Hart: No objection.

Mr. Sieg. I object to it on behalf of the defendant Deeb.

The Court: Received, subject to your right to make a motion.

(Government's Exhibit 38-B for identification received in evidence.)

By the Court:

541

Q. Did you divert unlawfully in violation of the regulations of the War Production Board any goods you had received on a priority order from Daisart Sportswear?

Mr. Hart: May I object to that. That is up to the jury to determine on the basis of his credibility.

The Court: Objection overruled.

A. Absolutely not.

By Mr. Hart:

542

Q. Mr. Witness, did you ever sell any grey goods?

Mr. Rudykoff: Objected to. I don't see the materiality of that.

The Court: It may be answered.

A. My firm has sold grey goods, yes.

Q. Was grey goods very very scarce? A. Yes, has been for years.

Q. Practically unobtainable, isn't that so? A. That is a relative question. It was very, very scarce.

543

Q. You were asked a question by his Honor or by Mr. Rudykoff whether or not this defendant ordered any grey goods. Was grey goods available in the quantity ordered?

Mr. Rudykoff: I object to it. I didn't ask the question.

The Court: I asked for the purpose of finding out the nature of the quality.

Mr. Hart: That is right, and I believe the answer was they delivered finished goods.

Mr. Rudykoff: 38-C, please.

586

(Government's Exhibit 38-C marked for identification.).

Mr. Rudykoff: Mark these D, E and F, please.

(Marked Government's Exhibits 38-D, 38-E and 38-F for identification.)

Q. Now I direct your attention to Exhibit 38-C for identification, to which is attached two slips containing certain figures. Would you look at it please and describe to us the circumstances under which those figures on that slip of paper were handed to you, where, and who was present? A. This particular goods I was out at Mr. Smith's place and he gave me these little copies at his place of business.

587

Q. Those figures are in handwriting, is that correct? A. That is correct.

Q. And to the left there appears at the top of the first slip—

Mr. Rudykoff: Mark these, please.

588

(Marked Government's Exhibits 38-G and 38-H for identification.)

Q. Now 38-G for identification, the top lefthand figure represents what? A. Bale numbers.

Q. Is that true of the figures which appear directly underneath that particular figure? A. Yes, sir, it is.

Q. The lefthand figures are bale numbers, is that correct? A. That is correct.

Q. The righthand figures represent what? A. Yardage.

By the Court:

544 Q. Did this defendant Daisart Sportswear order grey goods as well as finished goods? A. To the best of my recollection he ordered nothing but finished goods.

By Mr. Hart:

Q. That is right, and grey goods were very, very scarce? A. Oh, yes.

The Court: And grey goods is the merchandise
545 that comes from the mill before it is bleached and processed, is that right?

The Witness: Yes, sir.

Q. Could I ask this question, Mr. Witness: Was it the custom in the trade to insist upon selling finished goods, dyed goods, rather than grey goods?

Mr. Rudykoff: That is a custom with which we are not concerned.

The Court: I will allow the question.

The Witness: Could you repeat that question?

546 Q. (Question read.)

By the Court:

Q. Did the trade want to sell processed and finished goods in preference to grey goods? A. Not, I can only speak for my house. It is a big trade. Some houses sell grey goods. The majority of our business is the selling of finished goods.

Q. You are converters? A. Yes.

Mr. Hart: Ask him to speak a little louder, please.

589

A. Yardage.

Q. What bale numbers and what yardages were represented thereby? A. May I ask you to repeat that, please.

The Court: I can't hear what you are saying.

The Witness: May I ask you to repeat that, please.

Q. Will you tell us what merchandise was described by those bale numbers and those yardages? Was it the same merchandise that you described before? A. I could not say.

Q. Did that have reference to the 40,000 yards? A. I am not sure. 590

Q. All right, very well. Who gave you that slip? A. Mr. Smith.

Q. Now I show you Exhibit 38-H for identification and ask you where you got that? A. From Mr. Smith.

Q. And does your description with relation to 38-G apply to 38-H? A. Yes.

Q. Case numbers appear on the left, and the yardages appear on the right, is that right? A. That is correct.

The Court: Case numbers or bale numbers?

The Witness: Bale numbers, your Honor. 591

Mr. Rudykoff: I offer these in evidence.

The Court: That is Exhibit—

Mr. Rudykoff: 38-G and 38-H.

Mr. Hart: No objection.

Mr. Siegel: Same objection for defendant Deeb.

The Court: Same ruling as to the defendant Deeb.

(Government's Exhibits 38-G and 38-H for identification received in evidence.)

By Mr. Hart:

Q. And dyers, processors? A. And converters.

Q. During that period you couldn't get a white shirt?

The Court: That is immaterial.

Mr. Rudykoff: I will concede that.

(At this point Mr. Hart sits down.)

The Court: Any questions?

Mr. Siegel: I have no questions except I would ask that all of his testimony be stricken as to the defendant Deeb.

The Court: Motion denied. It is taken subject to connection and subject to your right to make a motion to strike out at a later time.

Mr. Rudykoff: Just a few questions, if the Court please.

Redirect Examination by Mr. Rudykoff:

Q. With regard to those sales notes you described, were the originals or copies thereof sent to Daisart? A. Yes.

Q. And is that true of every sales note? A. Yes.

Q. Now with regard to the invoices which you have seen and identified and which have been received in evidence, what happened to the originals of those invoices? A. They were mailed to the office of Daisart Sportswear Company at 90 Central Avenue, Newark, N. J.

Q. And did you ever see them thereafter? A. No.

Q. Now you have a file before you which contains duplicate originals of invoices, is that correct? A. Yes; they are triplicate copies.

Q. Made at the same time as the originals? A. Yes, at the exact same time.

Q. I show you 38-C for identification and ask you whether
592 38-G and 38-H are in any way related to 38-C for identification? A. They are.

Q. In what way? A. Well, this particular goods I can recall it distinctly, bore a yardage of 500 or a fraction thereof above. Inasmuch as it is wide goods and heavy goods, it was packed 500 yards to the bale.

Q. Did you give any instructions to Daisart with regard to shipment? A. I did, sir.

Q. What were those instructions? A. To ship the goods to Murray Schwab.

593 *By the Court:*

Q. To ship what goods? A. To ship this merchandise to Murray Schwab.

Q. What particular merchandise? We have had one shipment covered by Exhibit D. That is the only one we have evidence of.

By Mr. Rudykoff:

Q. With regard to the merchandise shipped, was it the merchandise described in 38-G and 38-H, these two slips? A. Yes, sir, it was.

594 Q. Now did you render a bill in connection with that sale? A. I did, sir.

Q. And to whom? A. To Mr. Schwab.

Q. And is 38-C for identification that bill? A. It is, sir.

Q. Now there is appended to 38-C for identification a tape containing some figures, is that correct? A. Yes, that is correct.

Q. Did you append it? A. I did not, sir.

Q. What is the total which appears on that slip? A. 7540 yards.

Q. Are they separated into two folders? A. Here?

550 Q. Yes. A. Yes.

Q. Do the folders coincide with your fiscal years? A. Yes.

Q. Do you have the folder which relates to 1944? A. I have. Wait until I see it here. 1944?

Q. Yes. A. I don't think we did business in 1944 with Daisart.

Q. Do you have the folder for 1945? A. Yes, sir.

Q. And does that contain a duplicate original or a triplicate original of every invoice you rendered to Daisart? A. Yes, sir.

551

Mr. Rudykoff: I offer it in evidence.

Mr. Hart: No objection.

The Court: That may be received.

The Witness: Will I get it back?

(Government's Exhibit 34 received in evidence.)

Q. You have handed to me two folders? A. Yes.

Q. Are these the folders you have reference to?

The Court: "These" are what?

552 Mr. Rudykoff: These are marked on the outside according to dates.

Q. And will you check me. The larger folder contains invoices from August 1944 to August 1945, is that correct? A. All invoices that would have been shipped in that fiscal period. I started in January.

Q. And the smaller folder contains invoices rendered from September 1, 1945, to what? August 31, 1946? A. Yes, in that date.

Q. You have no knowledge as to who put it there? A. I couldn't say. 595

Mr. Rudykoff: Now I offer in evidence 38-C for identification.

Mr. Hart: No objection.

Mr. Siegel: Objection on behalf of the defendant Deeb.

The Court: It is received subject to your right to move to strike out.

(Government's Exhibit 38-C for identification received in evidence.) 596

Q. I show you a check dated October 3rd, 1945, which is 38-F for identification, and I ask you what that was given in payment for? A. Given in payment for this goods.

Q. Now was that a payment on account or in full? A. Payment on account.

Q. Now I show you Government's Exhibit 38-F for identification.

Mr. Hart: What was the last one, Mr. Rudykoff?

Mr. Rudykoff: 38-E.

597

Q. I ask you what that represents? A. Payment for the same merchandise.

Q. There appear on the lefthand side of both 38-F and 38-G, a reference to certain yardages? A. Yes, sir.

Q. And was the check tendered in payment of the yardages described? A. Yes, it was.

Q. And is the price indicated per yard? A. Yes, it is.

Q. And what is that per yard? A. 57 cents.

Q. During that period? A. Yes.

Q. Now those months represent the beginning and the 553
end of your fiscal year, is that correct? A. That is correct.

Q. And all of your records are keyed accordingly?

Mr. Siegel: I object to these exhibits on behalf of the defendant Mr. Deeb, as being irrelevant, immaterial and not binding unless they are connected.

The Court: Objection overruled, subject to your right to make a motion to strike out.

(Government's Exhibits 34 and 35 received in evidence.) 554

Q. Now with regard to Exhibits 34 and 35, is it or is it not a fact that every invoice entered in those folders, Exhibits 34 and 35, are entered on Exhibit 33 which is the ledger sheets? A. Yes.

Q. And you have told us— A. With one slight reservation. The Government has had these folders for some time and I hope all of those invoices are there.

Q. I will take that reservation. At any rate, every invoice entered here on this ledger sheet which is 33 in evidence, the original of each and every one of them was sent to Daisart in one way or another? A. Yes, sir. 555

Q. Now you spoke about a September date—1945, was that? A. That was the War Production Board regulation.

Q. Yes. A. That is about the date.

Q. And you referred to an MM order? A. MM rating.

Q. Now when that order became effective what, if anything, did you do with regard to existing orders which had not been filled with relation to your customers? A. To this customer?

Q. To this as well as every other customer.

Q. Is he related to anyone that you know? A. He is
568 a brother-in-law of Mr. Smith's.

Q. Do you know Mr. Smith? A. I do.

Q. Do you see him in court? A. I do, sir.

Q. Will you identify him? A. Yes, sir. Mr. Smith (pointing).

Mr. Rudykoff: Indicating the defendant Smith.

The Witness: What is that?

The Court: Counsel is just making a statement for the record.

569 Q. On this first occasion did you see Smith? A. No, I saw Mr. Baker.

Q. Did you ever talk with Baker? A. I did, sir.

Q. What kind of a structure is 99 Central Avenue? A. I think it is a two-story building, meaning the ground floor and two other stories.

Q. And what is on the ground floor? A. A luncheonette.

Q. You are now speaking as of 1945? A. Yes, sir.

Q. And what floor did you go to? A. The first floor.

Q. And what sort of a place did you observe? A. Why, it was a loft that had a lot of long tables, cutting tables,
570 and some cases and some bales of merchandise.

Q. And while you were there did you examine some merchandise? A. I did, sir.

Q. And what kind? A. Are you talking now, counsel, about the first time I was there?

Q. That is correct. A. The first time I was there some samples were given to show to me of some rayon lining.

Q. Now did you return at any other time thereafter? A. Yes, sir.

Q. About when? A. Two or three days later.

Q. And at that time whom did you see? A. Mr. Smith.

Q. And who else? A. Mr. Baker. 571

Q. And at that time did you have a talk—did you have a conversation? A. I did, yes.

Q. Now what did you say, what did Mr. Smith say, and what did Mr. Baker say, and so far as you can recall indicate who said what? A. Well, I met Mr. Baker, and Mr. Baker told me that Mr. Smith was back in town and that he would show me certain samples and give me the price on the samples that he showed me. I then met Mr. Smith, and Mr. Smith proceeded to give me samples of materials and gave me prices on them.

Q. Thereafter did you show those samples to people? 572
A. I did, sir.

Q. While you were there on the second occasion were you shown any material other than the samples? A. Yes.

Q. And where was this material? A. On this first floor.

Q. In what condition was it? A. They were in bales.

By the Court:

Q. Was this a place in back of a luncheonette? A. No, your Honor; it was a place above a luncheonette.

Q. When you say the first floor, you mean the first floor 573
above the street? A. Yes.

Q. Not the street level? A. No, your Honor.

(Government's Exhibit 38 marked for identification.)

By Mr. Rudykoff:

Q. Now I direct your attention to a document dated September 29th, and I ask you what year was intended? A. Can I look at it?

Mr. Hart: Are those in evidence?

598 The Court: G and H, not F.

Mr. Hart: D, E and F are not in evidence.

Mr. Rudykoff: I will offer E and F in evidence.

The Court: I assume that you will at some time read these exhibits to the jury?

Mr. Rudykoff: Yes, your Honor.

The Court: I suggest after they are all in evidence you ask one or two questions so that the jury may be able to connect them one with the other just for the purpose of clarifying them.

599 Mr. Rudykoff: Very well, sir. If it is all right with Mr. Hart, I will proceed with it.

Mr. Hart: Yes, go ahead.

Mr. Rudykoff: Very well.

Q. Now I show you Government's Exhibit 38-D for identification and ask you whether that contains a memorandum with relation to a transaction regarding the 40,000 yards? A. Yes, sir.

Q. From your memory refreshed as it is from that particular memorandum, will you tell us what happened? A. Well, when I purchased this 40,000 yards of goods Mr. Smith wanted it in cash. I did not have any cash and I

600 turned over to Mr. Smith $15,000 worth of bonds as an initial payment on this 40,000 yards of goods.

By the Court:

Q. That was 40,000 yards at 57 cents a yard? A. That is correct.

Q. That would be a total involved of $22,800—a total involved in the transaction? A. Yes.

By Mr. Rudykoff:

601

Q. When did you purchase this bond? A. According to the slip it is May 29, 1945.

Q. And that slip 38-C represents the memorandum of your purchase, is that correct? A. That is correct.

Q. Was that an interest bearing bond? A. Yes. It was a comparatively new bond.

Q. Was it payable to bearer? A. It was payable to bearer.

Q. And did you turn it over physically to Mr. Smith? A. I did.

602

The Court: It is a coupon bond?

The Witness: That is correct, your Honor.

Q. Did you make a memorandum on this slip as to the transaction? A. I did.

Q. When did you make it? A. I made it when I turned over the bond to Mr. Smith—I mean not in his presence—my own records.

Mr. Rudykoff: I offer 38-D for identification.

Mr. Hart: I object to 38-D on the ground it is not binding on the defendant, not made in his presence, no proof that he is in any manner connected with it. 603

By the Court:

Q. Do you need this paper 38-D to refresh your recollection as to the date or any of the information on it or do you remember this incident independent of looking at this paper? A. I do remember it independent, your Honor.

The Court: I think that will be excluded. It is not necessary.

604 Mr. Rudykoff: All right. I offer 38-E for identification, and 38-F for identification.

Mr. Siegel: I object on behalf of the defendant Deeb.

The Court: Received, both of these exhibits, subject to your right later on to move to strike out.

(Government's Exhibits 38-E and 38-F for identification received in evidence.)

605 *By Mr. Rudykoff*:

Q. Were Government's Exhibits 38-E and 38-F in evidence in payment of the 40,000 yards also? A. They were.

Q. And those memorandums which appear on the left hand side of the checks, which are 38-E and 38-F, were they on the checks at the time of delivery to Mr. Smith? A. I am positive they were.

Q. With regard to 38-F there is a reference on the left-hand side to 10,836 yards, is that correct? A. That is correct.

606 Q. Was that the correct amount of yardage? A. No, it wasn't.

Q. What was the correct amount of yardage? A. 40,000 I think. Yes.

Q. That particular item of 40,000—1,836—

Mr. Hart: Is it ten or one?

Q. What does it represent in fact? A. It should have been, I imagine, eight thousand and something.

Q. Well, was there any other payment made by you in addition to those two checks and the delivery of this bond which you described? Was there ever some cash paid? A. I cannot recall. 607

The Court: I can't hear you.

A. I cannot recall, your Honor.

Q. Keep your voice up. At any rate, you specify on the left-hand side the price was 57 cents per yard, is that correct? A. That is correct.

Q. And is there any question as to the price per yard that you paid? Is there any question about that? A. No, sir. 608

Mr. Rudykoff: Now at this time, if I may, I would like to read to the jury some of the exhibits which have been described up to this point.

Q. Exhibit 38-A contains the case numbers, is that correct? A. That is correct.

Q. And the yardages? A. Are on the right-hand side.

Q. And that was given to you by Mr. Baker, is that correct? A. That is correct.

Q. Now the total yardages of 9,945, was paid for by you at what price? A. 57 cents. 609

Q. And subsequently you received other slips with bale numbers and yardages, is that correct? A. Correct.

Q. And they were delivered to you by whom? A. By Mr. Smith.

Q. And did they relate to the 40,000 yards? A. They do.

Q. And were they paid for by you at the rate of 57 cents a yard? A. Yes, sir.

Q. Now these checks which are Exhibits 38-F and 38-E in evidence, endorsed by George Smith—is that correct?
610 A. Yes.

Q. Both of them? A. That is correct.

Q. And payable to him, is that correct? A. That is correct.

Q. Were turned over in payment for—at least on account? A. In payment for that 40,000 yards.

Q. And then in addition to those checks at least you turned over a bond in the face amount of $15,000? A. Yes, sir.

611 The Court: How much is the check 38-E?

Mr. Rudykoff: 38-E is for $4,809, and Exhibit 38-F is for $4,704.92.

Q. And the bond that you described was a $15,000 bond? A. That is right—not a bond; bonds.

Q. Bonds? A. Bonds.

Q. 38-B represents the sale of the merchandise bought from Daisart to Schwab, is that correct? A. That is correct.

Q. Which is in the total amount of 9945 yards? A. That
612 is correct.

Q. And invoiced at what price? A. 59 cents.

Q. Is this the same merchandise that you bought from Daisart which you described a little while ago? A. It is, sir.

Q. 38-C, does that represent a sale of the same merchandise to Schwab? A. That is correct, sir.

Q. In the different amount—that is, how many yards? A. 8,045 yards.

Q. At what price? A. 59 cents.

Q. Now you had a transaction with Daisart in or about September of 1945? A. Yes, sir. 613

Q. With regard to which certain documents were made, is that correct? A. That is correct.

Q. Now I direct your attention—

Mr. Rudykoff: Would you mark these?

(Marked Government's Exhibits 39 and 39-A for identification.)

Q. I show you Government's Exhibit 39 for identification, Mr. Wolfe, and ask you to describe the circumstances under which that was made? A. I made a purchase of this goods from Mr. Smith. 614

Q. What kind of goods? A. It was termed a print cloth. It was finished, bleached white, and I sold this to a customer, and when I issued my bill in order that they be able to check it I had to have bale numbers and yardage. Mr. Smith gave me the list.

Q. Did he turn over this list to you? A. Yes, sir.

Q. And was it in the present form at the time you received it? A. It was on a paper. 615

Q. Is this the photostat of it? An exact reproduction of it? A. (No answer.)

Q. If there is any question about it, would you like to see the original? Is this the original? A. Yes, sir, that is.

Q. Now is 39 for identification a photostat of the original? A. It is, sir.

Mr. Rudykoff: Now I offer it in evidence.

Mr. Hart: No objection.

Mr. Siegel: Objection on behalf of the defendant Deeb.

The Court: The same ruling I have been making right along. Received.

616

(Government's Exhibit 39 for identification received in evidence.)

(Government's Exhibits 39-B to 39-F for identification marked.)

Q. Now, what are the facts with regard to 39-A? There are two columns at the top, is that correct? A. That is correct, sir.

617

Q. And the left-hand column represents what? A. The bale numbers.

Q. And the right-hand column? A. The yardage.

Q. And is that true of the other columns? A. Yes, sir.

Q. Paired off, one side represents the bale numbers and the other the yardages? A. That is right.

Q. Do you know from an examination of this how many yards were involved in the transaction? A. I couldn't say.

Q. Very well. I show you Government's Exhibit 39-B for identification. Is that related to 39-A? A. It is, yes, sir.

618

Q. And what does it represent? A. 36,291 yards at 40 cents per yard.

Q. Is that a check which was delivered or used for the purpose of paying for the merchandise described in 39-A? A. Correct.

Q. Was that check endorsed? A. Yes, sir.

Q. By whom? A. Mr. Smith.

Q. And is it certified? A. Yes, sir, it is.

Mr. Rudykoff: I offer it in evidence.

Mr. Hart: Which is this? 619

Mr. Rudykoff: 39-B.

Q. Now 39-C, is that a check payable to cash? A. It is, sir.

Q. What did you do with it? A. I gave it to Mr. Smith.

Q. Will you look at the back, the endorsement? A. Oh, I see.

Q. After examining the endorsement, will you tell us what happened? A. I cashed this check and delivered the cash to Mr. Smith.

Q. And with regard to 39-D, what did you do? A. Same 620
thing.

Q. And 39-E? A. Same thing.

Q. Now 39-C, D and E, were cashed by you, is that correct? A. They were, sir.

Mr. Rudykoff: I offer these in evidence. At this time I offer 39-B for identification.

(Government's Exhibit 39-B for identification received in evidence.)

Mr. Siegel: Objection on behalf of the defendant 621
Deeb.

The Court: The same ruling.

Q. No, what did you do—

The Court: Suppose we clean up. We have four or five of them pending now.

Mr. Hart: Mr. Rudykoff, may I ask, these three checks you have given me, what numbers are they?

Joseph Widfer—for Government—Direct

The Clerk: C, D and E.

622 The Court: The checks the witness said are payable to cash. You heard his testimony.

Mr. Hart: Yes, payable to cash. All right, C, D and E.

The Court: Now there is also Exhibit 39-B, is that in evidence already?

The Clerk: That is already in evidence.

The Court: Any objection?

Mr. Siegel: Same objection.

The Court: Same ruling, subject to your right to make a motion to strike out.

623

(Government's Exhibits 39-C, 39-D and 39-E for identification received in evidence.)

By Mr. Rudykoff:

Q. What was the price per yard with regard to this print cloth? A. 40 cents.

Q. And on the checks which are marked 39-E, C, D, and B did you so indicate on the left-hand side? A. I did, sir.

Q. And did you so indicate before delivering those checks, or using them? A. I did, sir.

624 Q. With regard to that yardage what did you do at any thing as far as disposing of them? A. Well, before I bought it I showed a sample of it to an account and he bought it from me and then I gave the order to Mr. Smith and it eventually was shipped to the firm that I sold it to.

Q. What firm was that? A. Berkshire Manufacturing Company.

Q. Did you render an invoice in connection with the sale? A. I did, sir.

Q. And is 39-F that invoice? A. Yes, sir.

Q. What was the price at which you sold it? A. I sold it at 40 cents and I received one cent for a finder's fee from him, a separate check. 625

Mr. Rudykoff: I offer 39-F for identification in evidence.

The Court: One cent a yard?

The Witness: One cent a yard, your Honor.

Mr. Hart: No objection.

Mr. Siegel: Same objection on behalf of Deeb.

The Court: Same ruling. 626

(Government's Exhibit 39-F—for identification received in evidence.)

Q. Now 39-A is the memorandum received from Smith containing the bale numbers and the yardages, is that correct? A. Yes.

The Clerk: You didn't offer A. A has not been offered in evidence.

Mr. Rudykoff: Well, 39—

The Clerk: 39 is.

Mr. Rudykoff: I see. I offer 39-A as part of the same— 627

Mr. Hart: May I see that again? I haven't any notation as to what 39 is.

Mr. Rudykoff: Yes (handing to counsel).

Mr. Siegel: Same objection for defendant Deeb.

The Court: The same ruling.

(Government's Exhibit 39-A for identification received in evidence.)

628 Q. 39-A and 39, which are two sheets, one being the front and one being the back of the document, represent the bale numbers and yardages? A. That is correct.

Q. 39-E is a check given in part payment, is that correct? A. That is correct.

Mr. Rudykoff: At this time I read 39-E, which is a check on the stationery of Joseph Wolfe—

Q. Is that your full name? A. That is correct.

(Mr. Rudykoff reads Government's Exhibit 39-E to the
629 jury.)

Q. "At exactly 40"—does that indicate 40 cents? A. It does.

(Mr. Rudykoff continues reading 39-E to jury.)

Q. Beneath that, "Balance, 13,000"—I had better let you read that. What is that figure balance? A. Balance, thirteen thousand—it should have been $13,650.40.

Q. Now 39-C was also a payment on account of this transaction? A. That is correct.

630

(Exhibit 39-C read to the jury.)

Q. Was that the initial payment? A. Yes.

Q. Was the $4,451 the initial payment? A. Could I look at it?

Q. Surely. A. I think it was.

Q. Now 39-D is also a payment on account, is that correct? A. That is right.

Q. And that is a check dated July 27, 1945, payable

to cash in the amount of $4,500, and on the left-hand side appears "On account, 36,291 yards at 40." Beneath that "payment Geo. Smith." 631

Was 39-B also a payment on account of the same transaction? A. Yes, sir.

Mr. Rudykoff: That is a check dated September 28, 1945. The amount is $1,000, and on the left-hand side appears a balance of 36,291 yards at .40. Gave 565.40 in cash. Is that correct?

A. That is not correct. I think it was one bond and some cash. A $500 bond and some cash to equal that. 632

Q. To equal what amount? A. $565.40.

By the Court:

Q. Whom did you give the bond to? A. Mr. Smith.

Q. The defendant? A. Yes.

Mr. Rudykoff: And this check is payable to George Smith. Now the invoice on the sale by Mr. Wolfe which is 39-F, is dated August 9, 1945, George Wolfe, underneath "Fancy Linens, 220 Fifth Avenue, New York. Sold to Berkshire Manufacturing Company, 320—5, N. Y. C. Terms: Net. 36,291 yards Cotton .40." Underneath "13,516.40. As per bale attached." Now, "As per bale attached," I direct your attention to that and I ask you at this time whether anything was attached to the invoice? 633

The Witness: A slip.

Mr. Hart: Was that "As per bale attached," or "bill"?

The Witness: "As per bale attached."

Q. You have reference to 39 and 39-A, the bale numbers
634 and yardages, is that correct? A. That photostatic copy you showed me of the—

Q. That was attached to 39-F? A. Yes.

Q. You have described certain material that you saw—

Mr. Rudykoff: Would you mark this, please.

(Marked Government's Exhibit 40 for identification.)

Q. I show you 40 for identification, Mr. Wolfe. From
635 whom did you get it? A. From Mr. Smith's office. I don't know whether Mr. Smith gave it to me or Mr. Baker.

Q. What kind of material is that? A. It is commonly known in the trade as a 185 drill, 56-inch drill.

Q. Is that part of the merchandise or is that the same merchandise which you previously described? A. The goods that I sold to Murray Schwab, yes.

Mr. Rudykoff: I offer it in evidence.

Mr. Hart: No objection.

Mr. Siegel: Objection on behalf of the defendant Deeb.

636 The Court: Same ruling.

(Government's Exhibit 40 for identification received in evidence.)

Q. At what price was that goods sold to you? A. cents.

Q. That is the first transaction you described? A. That is correct.

Q. Now reverting to a transaction which involved a drill at 59 cents per yard, is that correct? A. Correct, sir. 637

Q. Now the bale numbers are indicated on 38-G and 38-H, is that correct? A. Correct.

Q. What is the first bale number that you— A. 99986.

Q. Is that the number? A. 599986.

Q. Now I direct your attention to Government's Exhibit 31 in evidence and ask you if you see on page 4-F an invoice dated August 31, 1945, that bale number? Hold the paper up so that you can compare it? A. Yes, sir.

Q. Now in Government's Exhibit 31 does there appear a yardage alongside that bale number? A. 497. 638

Q. And does that coincide with the yardage that appears alongside the same bale number on 39-G? A. Yes.

Mr. Hart: I object to it. The exhibit speaks for itself.

The Court: I think so. I think that is a matter that you can call to the attention of the jury on summation.

Mr. Rudykoff: I could; but it is just a matter of information that I think will save considerable time.

The Court: No. I don't see that it will do any harm but strictly speaking it is objectionable. If 639 counsel presses the objection I will sustain it.

Mr. Hart: I do.

The Court: At this time I will take an adjournment if it is agreeable to you.

Mr. Rudykoff: Yes, your Honor.

The Court: The court will take a recess until 2:10. Now during the luncheon don't discuss the case among yourselves and don't discuss it with anyone else. If

anybody should approach you and speak to you con-
640 cerning this case report it to the Excused until
2:10.

(Recess until 2:10 p.m.)

AFTERNOON SESSION.

JOSEPH WOLFE, resumed the stand.

641 Mr. Rudykoff: May I approach the bench for a moment?

The Court: Yes.

(Conference at the bench.)

Direct Examination by Mr. Rudykoff (Continued):

Q. Mr. Wolfe, I direct your attention to Exhibit 26 in evidence, and particularly the first bale number. Is the 715085? A. Correct.

Q. Now I direct your attention to Exhibit 26 and ask you if you see that bale number on that particular exhibit?
642 715085, yes, I do.

The Court: Speak up, please, so that the last juror can hear you.

Q. Is the yardage indicated along with the case number

Mr. Hart: Let's see it.

Q. Is it 1000 yards? A. Yes, it is.

Q. And is it the same in both cases? A. It is.

Q. With regard to the transaction which is covered by

Exhibit 39, the price you paid was 40 cents a yard, is that correct? A. That is correct. 643.

Q. What is the price indicated on Exhibit 26? A. That is .11774.

Q. That is approximately 12 cents a yard? A. Yes.

The Court: .11—

The Witness: .774.

Mr. Hart: Now just a minute, please. I would like to have the previous question read, about what he paid for it.

The Court: You mean the witness?

Mr. Rudykoff: I will give it to you. 40 cents 644
a yard.

Mr. Hart: On what exhibit does it appear?

Mr. Rudykoff: Exhibit 39.

Mr. Hart: 39 is not what he paid for it. May I move to—

The Court: I think it should stand. Counsel made a mistake.

Mr. Rudykoff: No, I did not.

By Mr. Rudykoff:

Q. What did you pay Mr. Wolfe for this material when 645
you bought it? A. 40 cents.

The Court: But the price shown on the bill to Daisart is approximately 12 cents?

Mr. Rudykoff: .11774, or approximately 12 cents a yard.

Q. Now I direct your attention to Exhibit 38-A and ask you to indicate or state the bale number? A. 614650.

Joseph Wolfe—for Government—Cross

Q. I now direct your attention to Exhibit 31 in evidence
646 and ask you if that bale number appears at the top of the list appearing on the first page? A. It does.

Q. And is the yardage alongside identical? A. Yes.

Q. And with regard to the transaction which is in evidence under No. 38, what did you pay per yard to Daisuke? A. 57 cents.

Q. What is the price per yard set forth in Exhibit 31?

Mr. Hart: I object to it. There is no [illegible] it is the same material.

The Court: Overruled.

647 Mr. Hart: Exception.

The Court: The jury may draw an inference from the bale number.

A. 32755.

Q. Now in the textile trade is it the usual and customary practice to invoice textiles according to case or bale number? A. Yes, it is.

Q. And usually alongside the bale or case number is there a statement of the yardage involved? A. There always is.

648 Mr. Rudykoff: You may inquire.

Cross Examination by Mr. Hart:

Q. Mr. Wolfe, I show you Exhibit No. 38, and the alphabetical exhibits under 38, and ask you do the checks which are in evidence constitute full payment for the yards? A. To the checks in evidence?

Q. The checks attached to this exhibit, constitute

payment by you to Daisart or Smith of the 9945 yards? A. They do. 649

Q. Well, will you pick out the checks which were issued in payment of the 9945 yards? A. May I say that these checks paid for the whole amount of goods, the 40,000 yards.

Q. Those checks paid for the 40,000 yards? A. Yes, paid for the whole amount of goods.

Q. Those three checks? A. No, there was something—

Q. Those checks I asked you before, do they constitute payment of 9945 yards? I will come to the other checks later. A. Yes, some of it does.

650

By the Court:

Q. Do they constitute the entire payment or was there an additional payment? A. These checks that counsel shows me amount to a great deal more than the 9945 yards.

Q. They include the 9945 plus additional merchandise? A. Plus some of the same merchandise.

By Mr. Hart:

Q. I show you Exhibit 38-F and ask you in whose handwriting the body of the check is? A. My handwriting.

Q. And in whose handwriting is the writing in the box which shows the purpose for which the check was issued? A. My handwriting. 651

Q. You have your account in the National City Bank of New York, is that correct? A. That is right.

Q. Do you state that that writing in the box under the heading, "Date, Amount, or No receipt required" was there at the time you issued that check to Smith? A. I am almost positive.

652 Q. Almost positive? Are you positive it was there? A. I am pretty positive.

Q. Now you are pretty positive. Are you certain it was there? A. Yes, I am certain because that is the way I would make a check out.

Q. Are you certain that it was there because of the way you did make these checks out? A. I am, sir.

Q. I direct your attention to the fact that this check 384 is in the amount of $4,704.32, and it purports to be for 1008¾ yards at 57 cents a yard? A. Yes.

Q. How much would 1008 yards be at 57 cents a yard?

653 A. I made an error on that, counsel. A thousand yards at 57 cents a yard would be five hundred and some odd.

Q. $570 or $580? A. That is correct.

Q. When did you make the error? A. When I made the check out.

Q. Did you make the error when you made the check out or did you make the error when you put that in the box which says "No receipt required." A. Counselor, I made the check out the same time I made the box out.

Q. Do you know whether the National City Bank makes a photostatic copy of each check that goes through the bank at the time it goes through? A. I do not.

654 Q. Do you still say you put the writing in that box? A. I did, counselor.

Q. That is what your meant when you said you were pretty sure? A. Yes.

Q. Will you tell us how many thousands of dollars did you make an error in when you put that in the box? A. By about $4200.

Q. $4200. Now I show you Government's Exhibit 5-J. This purports to be in payment of 7750 yards? A. Yes.

Q. At 57 cents a yard? A. Yes.

Q. Will you look at that and tell us whether you also made an error with respect to that notation? A. Well, counselor, 655
I would have to take a pencil to figure this out, wouldn't I?

Q. Here is a pencil and I will give you a piece of paper (handing). A. I get $4308.63.

Q. That represents 7559¾ yards at 57 cents? A. I didn't put the three-quarters in.

Q. Then it would be $4309 even? A. Yes.

Q. Now you say that on Exhibit 38-F you made a mistake of a couple of thousand dollars? A. I did, counselor.

Q. How many thousand? A. $4200.

Q. An underpayment? A. Overpayment.

Q. An overpayment of over four thousand dollars, is 656
that correct? A. Yes, but if you give me a chance counselor I might be able to tell you why I put that there. It might require a digit. With a pencil in going over the stub of a check you are only interested in what you are paying.

Q. In writing a check you are interested in putting in the purpose for which the check was drawn? A. Yes.

Q. And you put in there 1008 yards at 57 cents, which you say was put in there before the amount and should have been five hundred and some odd dollars and you made a check out for 5700 and some dollars? A. I did.

Q. And you still say that was in there at the time? A. 657
Yes, counselor.

Q. How long were you in the business of selling merchandise, buying and selling merchandise? A. Fifteen years.

The Court: Try and raise your voice.

A. Fifteen years.

The Court: Talk to the last juror when you ask
658 and make sure that she hears you.

Q. And you knew, did you not, the market price of the material that you purchased? A. Pretty near, counselor.

Q. Now you say that you paid 57 cents a yard for that material? A. Yes, counselor.

Q. What was the ceiling price on that material? A. I couldn't say positively, counselor, but I say in the neighborhood of around—

Mr. Rudykoff: Just a moment. I object to that
659 because that is calling for a conclusion, because the ceiling price is what the suppliers pay for it.

The Court: It varies, does it, according to the regulations?

Mr. Rudykoff: No, it is precise. It is the exact cost. What this witness may believe is the price wouldn't govern.

The Court: I think the objection is well taken.

Mr. Hart: If the Court please, that isn't my understanding of it, and I am asking this question for the purpose of affecting the credibility of this witness. I want to know if he purchased in excess
660 of the ceiling price if his statement is true.

The Court: Did you know you were paying ceiling price or above it?

The Witness: I knew that I was paying above it.

Q. You knew you were selling it above? A. I did.

Q. And have you been indicted? A. No, I haven't been indicted.

Q. Have you talked this matter over with Mr. Rudykoff? A. I did talk about it with Mr. Rudykoff.

Q. Now when did you talk it over with the United States Attorney's Office? A. Once.

661

Q. When was that? A. Yesterday.

Q. And you never have come down here before, have you? A. I did.

Q. Then you talked it over more than once? A. No. I didn't talk it over; I just came on another—the same case and I saw Mr. Rudykoff and he told me to wait till my turn came.

Q. When your turn came did you speak to him? A. Yes.

Q. Did you go before the Grand Jury? A. No.

Q. Did you sign a waiver?

662

Mr. Rudykoff: There was no waiver signed.

Q. Did you go before the Federal Grand Jury? A. I did not.

Q. And you have not been indicted? A. No.

Q. Do you keep books? A. I did not.

Q. Did you keep books? A. I did not.

Q. How much business did you transact in the course of 1945? A. 1945?

Q. Yes. A. I would say about seventy-five or eighty thousand dollars.

663

Q. And is that sales? A. That is sales, yes.

Q. And did you make a tax return on that basis? A. Yes, sure.

Q. Did you have books from which you got your figures?

Mr. Rudykoff: I object to that. He has answered.

The Court: Objection sustained.

Q. Did you file a return for $75,000 gross business? A. I filed a return and paid exactly what I was supposed to pay.

Q. Did you include $75,000 worth of sales? A. I did.

664 Q. And did you get those figures or do you have any books and records whatsoever which show the business you did during that year? A. No, Counselor, because during the whole year I may have ten or twelve sales and just kept a notation of them and the profit that I made and just reported exactly what I made on each transaction.

Q. You said something about $15,000 worth of bonds. What bank did you draw the money on to pay for those bonds? A. The National City Bank.

Q. Did you draw a check? A. I drew a check.

Q. Do you have the check? A. I might have, yes.

665 Q. Do you have a record of the numbers of the bonds? A. No, I have not.

Q. The numbers of the bonds? A. They were just plain bonds.

Q. No numbers on them? A. I mean I never kept any numbers on them. They were not registered bonds.

Q. Referring now to Exhibits 39-E—referring to these four checks that form part of Exhibit 39, on the back of which appears "O.K. for cash, Joseph Wolfe" you personally went to the bank and cashed these checks? A. I did.

666 Q. And you say the reason you cashed these checks was because Smith wouldn't take a check from you? A. Smith wanted cash.

Q. Did he accept checks previously? A. He did, but in that particular—

Q. Did he accept checks subsequently? A. I would have to refresh my memory.

Q. Did you ever get a receipt? A. None whatever.

Q. Did you ever get any protection in the event he would say he never got paid? A. Never did.

Q. You still paid this cash to Smith? A. I did, Counselor.

667

Q. Did you have this writing on these checks in the box which says, "No receipt required" at the time you cashed these checks at the bank? A. I did.

Q. I direct your attention to the perforation on this check which is 39-B. Does any part of the writing go through the perforation?

The Court: Any part of the perforation go through the writing, he means.

Q. Or vice versa. Either way. A. You mean this initial?

668

Mr. Hart: According to my contention my question is properly put.

Q. Does any part of the writing go through the perforation? A. No.

Q. Will you tell us why you didn't write the word "of" on that line where the perforation now appears? A. I can't tell you.

Q. Plenty of room for it, wasn't there? A. There is plenty of room, Counselor.

669

Mr. Hart: May I show this to the jury?

The Court: Yes.

Q. That perforation, that appears there wasn't there at the time you wrote this in the box? A. I told you it was, Counselor.

Q. It was there? A. The perforation wasn't there.

Q. Then you didn't tell me it was. So there was nothing to stop—

The Court: He has already answered.

670 Mr. Rudykoff: What check number is that?

The Foreman: 39-B.

Q. Now I show you Check 38-E, and you say that this mark or notation in the box, "No receipt required" this writing was there before this check went to the bank? A. Yes, Counselor.

Q. Can you tell us why you started underneath the perfofation almost at the bottom instead of starting at the top on that check? A. Did I start at the top on the other?

671 Q. Don't ask me. A. I don't know.

Q. You don't know? A. I don't know, Counsel.

The Foreman: Weren't these checks the ones supposed to be for cash?

The Court: You had a question?

The Foreman: I want to know if these checks are the ones O.K.'d for cash?

The Court: Ask the witness. These checks, the ones being shown to the jury, the ones O.K.'d for cash?

Mr. Hart: May I have that check? I think I can

672 clarify it. The check explains that the check is O.K.'d for cash, George Smith, yes.

The Court: (To the witness). What is your answer?

The Witness: They won't—

Mr. Hart: For the sake of the record, 39-B was

made payable to George Smith. 38-E, which I am now showing to the jurors, was made payable to George Smith. The purpose for which I am showing it to the jurors is to show— 673

The Court: We understand the purpose. Proceed. Don't point out anything. Just give the exhibits to the jury.

Mr. Hart: May I state what part I want them to look at?

The Court: I think they have that sufficiently indicated by your interrogation.

Mr. Hart: All right. 674

By Mr. Hart:

Q. Now you asked me a question, Mr. Witness, whether or not on any of the other checks you started at the top. I show you now Exhibit 38-E. There is no perforatio at the top of the box which says, "No receipt required," is that correct? A. That is correct.

Q. So in this particular case you did start at the top? A. Don't you think, Counselor, because there is more writing there?

Q. Did you start at the top? A. I started at the top. 675

(Mr. Hart handed some exhibits to the jury.)

Mr. Hart: I did inadvertently point to it again, your Honor. I am sorry.

The Court: All right, those things.

Mr. Hart: May I have the originals of those checks, if they are important?

Mr. Rudykoff: Yes, I have the originals. I would

like to have the amounts so I can pick them out
676 because the originals are not marked.

Mr. Hart: Can I see all the original checks, the photostats of which are in evidence?

The Court: Why, yes, if the Government has them. I think you are entitled to inspect them.

Mr. Rudykoff: (Handing) I think you may find that those are all the checks.

The Court: The jurors are not to discuss the exhibits as you pass them. Each one of you will make his or her own examination individually and separately. Discussion should take place after the
677 case is finally submitted to you.

Have you any questions to ask, Mr. Siegel, while Mr. Hart is examining the papers?

Mr. Siegel: I have no examination.

The Court: All right.

Mr. Hart: May I approach the Court with Mr. Rudykoff?

The Court: Yes.

(Conference at the Bench.)

Mr. Hart: Now may we identify these checks
678 and see which exhibits they are?

Mr. Rudykoff: I think the best way is to key them with the exhibits.

The Foreman: Your Honor, may I ask a question?

The Court: You may, through me.

The Foreman: For clarification purposes, if the material was bought from Daisart Sportswear, Incorporated, why are the checks issued to George Smith?

Joseph Wolff—for Government—Cross.

By the Court:

679 Q. Is there any reason why the checks are issued to George Smith instead of to the Daisart Sportswear? A. No reason.

Q. Did you issue them after a conference or consultation or request of anybody? A. No, sir.

Q. Were you requested by anybody to draw the checks to the order of George Smith instead of Daisart? A. No, sir.

Mr. Hart: (To Mr. Rudykoff) Do you want to make the mark. This is 39-D. 680

(Mr. Rudykoff marks paper.)

Mr. Hart: And this is 39-B.

Now I offer in evidence, if the Court please, a check which has been handed to me by United States Attorney, being the original of the photostat which is in evidence as 39-D, and I ask that it be marked 39-D-1.

The Court: Well, mark it 39-DX.

Mr. Rudykoff: No objection.

The Court: 39-DX, that is the original of which a photostat has already been marked in evidence. 681

(Marked Exhibit 39-DX.)

Mr. Hart: Now, I am going to offer in evidence original of a photostatic check now in evidence as 39-E, and ask that it be designated 39- whatever your Honor designated

The Court: 39-EX, so that we know that the X is the original of the photostat.

Mr. Rudykoff: No objection.

682

(Marked Exhibit 39-EX.)

By Mr. Hart:

Q. Now, Mr. Witness, I am going to again show you the photostatic copy of Exhibit 39-D. You see the stamp in the box there which reads, "Paying and Receiving Teller, July 27, 1945"? A. I do.

Q. That was not on there at the time you drew that check, was it? A. No, sir.

683 Q. That was put on there after that check went through the bank? A. That is right.

Q. Or at the time it went through. Now I am going to show you the original of that check which is now in evidence as 39-DX, and I want you to look at the writing in that box, examine it carefully, and do you say that the writing in ink was placed on that check before the stamp? A. Yes.

Mr. Hart: May I show it to the jury, if the Court please?

The Court: Yes.

684

Q. I am going to ask you the same question with respect to 39-E, photostatic copy check. This stamp, "Paying and Receiving Teller" was not there at the time you issued the check, was it? A. No.

Q. Was the writing in pen and ink in the box, which reads "On account 36291 yards at 40" there before the stamp? Was it put on there after the stamp? A. Before the stamp.

Q. Will you look at it, please? A. Yes.

The Foreman: Your Honor, these checks are not similar. The photostatic copy in this one is not the same. One is 4900 and the other is 44.

Mr. Hart: My error. I reversed them.

The Court: They are not reversed the way they were received in evidence, are they?

Mr. Hart: No, they are not.

The Court: Any further questions?

Mr. Hart: I prefer to have the jury look at that.

The Court: They can look at it.

Mr. Hart: Shall I proceed?

The Court: Yes, if you will.

Q. Then you say that Mr. Smith refused to render a bill to you? A. That is right.

Q. And yet you say when you gave him a check you had the purpose of the check written in on the check. A. I didn't say he refused; I said for two cents extra he would render a bill.

Q. He was perfectly willing to give you a bill? A. At two cents more a yard.

Q. Specifying the price on the bill? A. Yes.

Q. According to your contention you bought from Mr. Smith over the ceiling price and you sold over the ceiling price, is that correct? A. That is true.

Q. And is the price which you put on those checks over the ceiling price? A. It is.

Q. The notation in the margin over the ceiling price? A. It is.

Q. And you knew you were putting something in writing that would show you were violating the law? A. I did.

Q. And you knew you were violating the law if your
688 story is true? A. That is absolutely true.

Mr. Hart: I have no further questions of this witness.

The Court: Any questions?

Mr. Rudykoff: Any other questions?

Mr. Siegel: No.

The Court: He said he hadn't any.

Redirect Examination by Mr. Rudykoff:

689 Q. Mr. Wolfe, to whom did you give the cash? A. To Mr. Smith.

Q. To whom did you give the check payable to Mr. Smith? A. To Mr. Smith.

Q. And was the cash given and the check given in connection with the purchase of the materials? A. It was.

Q. I direct your attention—or before I do so I should like to have you make some calculations, if you please. I have a pencil and paper (handing). Will you calculate 10,008 and three-quarter yards at 57 cents a yard?

Mr. Hart: What are those figures?

690 Mr. Rudykoff: 10,008 and three-quarter yards at 57 cents a yard.

A. $5,704.98.

Q. With regard to the pennies, would you check that? You may be right at that. 5704 and 98 cents. A. Yes.

Q. Would you look at 38-F? A. Yes.

Q. And that is for how much? A. $4,704.92.

Joseph Wolfe — for Government — Recross

Q. Does that refresh your recollection as to what happened? A. It does. 691

Q. What did happen? A. I think that I gave Mr. Smith this check for $4,704 and 92 or 98 cents, and that I owed him a thousand dollars.

Q. Did you make a check for a thousand dollars or cash? A. I made a check out for a thousand dollars, I am almost sure.

Mr. Rudykoff: You may inquire.

The Court: Any further questions?

Recross Examination by Mr. Hart: 692

Q. I just wanted to ask, did you have a bank account at all times during these transactions? A. I did.

Q. And when you made out these checks, you were open about the thing, putting down the nature of the transactions on the check?

The Court: He has already answered that.

Q. Will you tell us why you gave bonds in payment of merchandise? A. Well, Mr. Smith wanted cash and I told him I didn't have cash. I said I had some bonds. He said he would gladly take them. 693

Q. Did you have cash in the bank at that time? A. I had no cash, no.

Q. You got no receipt? A. No, I didn't.

The Court: Next witness.

(Witness excused.)

WILLIAM LEVIN, called as a witness by the Government,
694 being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

Q. Mr. Levin, what is your business? A. Rayon lining converters.

Q. How long have you been in that business? A. About twenty-nine years.

Q. Do you know of the firm of Daisart Sportswear, Inc.? A. I do.

Q. Did you have certain transactions with them in 1944
695 or 1945? A. I think it is 1945.

Q. I show you Government's Exhibit 41 for identification. Part of this exhibit is a document dated July 20, 1945. From whom did you receive that? A. Daisart Sportswear.

Q. And in connection with that document did you receive a further document dated July 24, 1945? A. Yes, my confirmation.

Q. And with regard to the same transaction did you get a letter from Daisart dated August 21, 1945? A. Yes, sir.

696 Mr. Hart: I am going to object to this. You say, "Did you get a letter?" Are the letters addressed to him?

Q. Speaking about S. Eisenberg. A. That is right.

The Court: What was that?

The Witness: S. Eisenberg & Sons.

Q. What is your connection with it? A. Partner.

Q. Did S. Eisenberg & Sons also receive a letter dated August 24, 1945 from Daisart? A. Yes, sir. 697

Q. And with respect to this particular transaction did the firm render the invoices which are here dated August 27th and August 29, 1945? A. Yes, sir.

Mr. Rudykoff: I offer these in evidence.

Mr. Hart: That is all offered as one exhibit?

Mr. Rudykoff: Yes.

Q. I show you Government's Exhibit 42 for identification, and ask you if the documents attached relate to a transaction concerning an order received from Daisart Sportswear, Inc.? A. Yes, sir. 698

Q. And the date of that order is what? A. January 4, Q. 1945? A. Yes.

Q. And thereto appended are invoices rendered and correspondence had with regard to that order, is that correct? A. True.

Mr. Rudykoff: I offer Government's Exhibit 42 for identification in evidence.

Q. I direct your attention to Exhibit 43 for identification— 699

Mr. Hart: Judge, I want to do everything I can to expedite matters but if I am handed exhibits—

The Court: You have two that you are examining now.

Mr. Hart: I can't listen with one ear and examine these papers.

700 The Court: Yes, I think that is fair. I will permit counsel to examine these papers for a moment.

Mr. Rudykoff: All right, sir.

Mr. Hart: Exhibit 41 and Exhibit 42 have been examined by counsel. The defendants have no objection to their introduction.

Mr. Siegel: Objection on behalf of the defendant Deeb.

The Court: They are received subject to your right to make a motion to strike.

701 (Exhibits 41 and 42 for identification received in evidence.)

The Court: Exhibit 41 concerns a transaction of what date?

Mr. Hart: July 20 and July 24.

Mr. Rudykoff: Exhibit 41 relates to Count 40, if the Court please; and Exhibit 42 relates to Count 5.

Q. Mr. Levin, do you recall about when—do you know George Smith? A. I met Mr. George Smith.

Q. Do you recognize him? A. Yes, sir.

702 Mr. Rudykoff: Indicating the Defendant George Smith.

Q. Do you recall about when you first saw him? A. I first saw him at the time he issued a priority to us.

Q. Was that in connection with the first order? A. Correct.

Q. And are you speaking of Government's Exhibit 42?

A. Yes, sir. I recall definitely going to Mr. George Smith's office on this particular order about — 703

Q. Before going to his office did someone communicate with you? A. Either his office—this confirmation was sent in—I don't recall whether it was by telephone conversation or he brought the order in person, the original order, or he sent a messenger with this order to my office.

Q. Well, at some time an order was sent to your office, is that correct? A. On January 4th.

Q. Did you see Smith on that day or a subsequent time? A. I don't recall seeing Mr. Smith on January 4th, but I do— 704

Q. Did you see him thereafter? A. I did.

Q. When? A. I think it was in February.

Q. And where did you see him? A. At his office.

Q. And where was that? A. In Newark, New Jersey, Central Avenue.

Q. At that time did you have a talk with him? A. Yes, sir.

Q. And did it concern Exhibit 42? A. Yes, sir.

Q. What did you say and what did he say? A. I saw Mr. Smith regarding credit payments on this particular order. 705

Q. What was the talk? What did you say and what did he say? A. I told him that I drew a report on this concern and they didn't warrant the amount of credit that his orders called for. He told me he would give me a check on account—I asked him for $5,000 on account covering this particular order against delivery of merchandise.

Q. And was that arrangement made? A. Yes.

Q. Did he agree to make that payment? A. Yes, sir.

Q. Now did you have any talk at that time or at any other time about the rating? A. Priority rating?

Q. Yes. A. It was called for on this contract.

706 Q. Well, did you have any conversation with him with regard to that? A. No.

Q. You were aware it was a rated order? A. Correct.

Mr. Hart: I object to the leading question.

By the Court:

Q. Were you aware from any conversation you had with Smith? A. When Mr. Smith delivered this order to me, I knew it was a Government rated order.

707 Q. How did you know that? A. By the number.

Mr. Rudykoff: What is the rating?

The Witness: It has a rating AA-1, which is the highest priority rating.

May I ask a question? Is this the first—

The Court: No, don't ask.

The Witness: I am sorry.

Mr. Hart: I can't hear what you are saying.

The Court: If you have any questions to ask to assist you in answering any questions put to you, you address the Court. I will try to assist you.

708 The Witness: I am sorry.

By Mr. Rudykoff:

Q. Now, appended to Exhibit 42 is an order dated January 4, 1945 for 100,000 yards, is that correct? A. Correct.

Q. Now the following document is an order on the letterhead of Daisart dated January 17th of 1945, is that correct? A. Yes, sir.

Q. Now does that relate to the order of January 4, 1945? A. No, sir. January 4th—can I talk? 709

Q. Yes; will you tell us what the January 17th document is? A. The January 4th first. The January 4th document was issued by Mr. Smith which was rejected by War Production Board as being outlawed—the rating being outlawed—and I called Mr. Smith and I told him we can't accept this particular order. On January 17th he sent me a new order which I submitted to our mill which was submitted to War Production Board, which was accepted as per invoices shipped.

710

The Court: And both orders were for a hundred thousand yards?

The Witness: Both orders for a hundred thousand yards.

Q. As to the January 4, 1945 order, was an end use certified on it? A. Yes, sir.

Q. What was it? A. Special army kits.

Q. Now the order of January 17, 1945 for the same yardage specifies an end use, does it not? A. Yes, sir.

Q. And what is that? A. Filter ammunition bags for Army-Navy under War Production Board Order 542. 711

Q. With regard to end use, I direct your attention to letter dated January 19, 1945. A. This order of January 17th was submitted to our mill and they called us back and said there was no end use on this. I called Mr. Smith and he authorized me to put the end use on, and he sent me a letter to that effect.

Q. And is that the letter of January 19, 1945? A. Correct.

712 Q. With regard to the invoices annexed to this particular Exhibit 42, were the shipments made to or for the account of Daisart Sportswear as therein described? A. Yes, sir.

Q. And was payment made by Daisart Sportswear of the charges? A. Yes, sir.

Mr. Rudykoff: At this time, if I may, I should like to read the letters in the exhibit.

Exhibit 42, January 4, 1945, stationery of Daisart Sportswear, Inc., addressed to S. Eisenberg & Sons, 114 Fifth Avenue, New York (Reading).

713 On the stationery of Daisart Sportswear, Inc. a letter dated January 19, 1945 addressed to S. Eisenberg & Sons (Reading).

And under date January 17, 1945 on the stationery of Daisart Sportswear, Inc., a letter to S. Eisenberg & Sons (Reading).

Q. The material described in these documents is described as 84 by 60. What does that mean? A. That is the construction, the count of the goods.

Q. And 84 indicates what? A. The warp.

714 Q. And what is the warp? A. The thread running up and down.

Q. Vertically? A. That is right.

Q. And 60 indicates what? A. Across.

Q. And that is the count per inch? A. Per inch.

Q. Per square inch? A. Per square inch.

Q. And of course the same would be true of 92 by 64? A. Correct.

Q. 92 running lengthwise? A. Yes.

Q. And 64 across? A. Across.

Q. And with relation to price, does the price of the material increase as the count increases? A. Correct. 715

Q. The more the count, the better the material? A. That is correct.

Q. What kind of material was involved here with regard to whether it was gray or finished? A. The construction specified on the letterhead is the gray goods. That is before finished.

Q. Yes, but what was delivered? A. 88 by 62 was delivered.

Q. And was it in the finished state or in the gray? A. In the gray state. 716

Q. There are shades indicated on the invoices. A. Those were Mr. Smith's shades.

Q. And did you convert it for him? A. Correct.

Q. When you delivered it to him was it in the finished state? A. In the finished state.

By the Court:

Q. You had them dyed? A. Yes.

Q. You delivered him colored merchandise? A. That is right.

717

By Mr. Rudykoff:

Q. And the colors delivered to him were gray, teal, blue, brown, light brown? A. Camel's hair.

Q. What is camel's hair? A. Light color.

Q. Brown? A. A light tan.

Q. What is material of that kind commonly used for? A. Men's clothing—linings.

The Court: This is a rayon twill?

718 The Witness: Rayon twill.

Q. On or about September 24, 1945, was a communication sent to Daisart? A. Yes, sir.

Q. And is that the duplicate original which is Exhibit 43, for identification? A. Correct.

Mr. Rudykoff: I offer it in evidence.

Mr. Hart: No objection.

The Court: Received.

719 (Exhibit 43 for identification received in evidence.)

Mr. Siegel: Same objection for the defendant Deeb.

The Court: Same ruling.

Mr. Rudykoff: May I read this?

The Court: Yes.

Mr. Rudykoff: Letter dated September 24, 1945, addressed to Daisart Sportswear (reading).

Q. Did you ever get a re-rating? A. No, sir.

720

The Court: The letter was dated what date?

Mr. Rudykoff: September 24, 1945.

Q. I show you Government's Exhibit 44 for identification and ask you to describe it. A. Well, on April 17th—

Q. No, no; just describe it. Is it a ledger sheet? A. It is a ledger sheet—receivable ledger sheet.

Q. Showing what? A. Payments and shipments to and from Daisart Sportswear.

Mr. Rudykoff: I offer it in evidence. 721

The Court: That is the ledger sheet of Dalsart account with your company?

The Witness: That is right.

Mr. Rudykoff: I offer it in evidence.

Mr. Hart: No objection.

Mr. Rudykoff: You may inquire.

Mr. Siegel: Same objection.

The Court: It is received.

(Exhibit 44 for identification received in evidence.) 722

Mr. Siegel: Objection for the defendant Deeb.

The Court: Same ruling.

Cross-Examination by Mr. Hart:

Q. Out of all these orders that have been produced and marked in evidence, 41, 42, how many of them were filled? A. The one order was filled complete.

Q. And that was approximately 100,000 yards? A. 100,000 yards.

723

The Court: That was the order, Exhibit 42?

The Witness: If I could see it—I would like to look at it.

Mr. Rudykoff: Shall I show it?

Mr. Hart: You can show it.

The Witness: 42 was not shipped against order of January 19th—no, I am sorry. Order of January 17th was shipped complete.

724 *By the Court:*

Q. That is the rayon twill? A. Rayon twill.

Q. 100,000 yards? A. 100,000 yards, and then we shipped another 10,000 yards against Order Exhibit 41.

Q. The order of July 24, 1945? A. July 24, 1945 which I did not receive from the mill; as they cancelled this particular order, but Mr. Smith asked me to anticipate delivery on this particular order so I shipped him 10,000 yards from my own stock.

725 *By Mr. Hart:*

Q. Did you ship him 10,000 yards, or did you ship him 3900? A. I said approximately—I am sorry.

Q. All right, I mean I want you— A. Here is the amount. 4,711½ and 5,840¼ yards was shipped against the second order.

The Court: You shipped that out of your stock inventory?

The Witness: Our stock inventory.

726 Q. Your concern were converters, were they not? A. Yes, sir.

Q. And part of your money comes from converting? I mean there is less money if you sell gray goods? A. I don't hear.

The Court: You make a larger profit if you sell converted goods than if you sell gray goods?

The Witness: We don't sell gray goods; we just sell finished goods.

Q. And had gray goods been requested, you wouldn't have sold it? A. Wouldn't have sold it. 727

Mr. Hart: That is all.

Cross Examination by Mr. Siegel:

Q. You never had any transactions with Mr. Deeb at all? A. Who?

Q. Mr. Deeb? A. I don't know him.

By Mr. Hart: 728

Q. Did you say you were over to Newark, New Jersey? A. Yes, sir.

Q. And you were in the factory of Daisart? A. Yes.

Q. And how many people did you see working there? A. Quite some few.

Q. Did you see what they were cutting up? A. They were not cutting; they were sewing up a blue coat at the time I was there.

Q. Did you see Navy leggings? A. I don't recall.

By the Court: 729

Q. What kind of coat did you see them making? A. It was a blue fabric.

Q. Ladies' coat or men's? A. I don't know.

By Mr. Hart:

Q. Were they Navy pea jackets? A. I think so.

Q. Did you also see Army kits? You know what they are? A. No, sir.

730 Q. You have seen Navy pea jackets, these short coats? A. Yes, sir.

Q. Is that what you saw over there? A. Yes, sir.

Mr. Hart: That is all.

Redirect Examination by Mr. Rudykoff:

Q. Did you see any filter bags? A. No, sir.

Q. Have any talk about filter bags? A. I asked Mr. Smith to show me a sample. He said he didn't have the sample

731

Mr. Rudykoff: That is all.

(Witness excused.)

Mr. Rudykoff: Mr. Simpson.

The Court: I think we will declare a recess for ten minutes now.

(Short recess.)

Mr. Rudykoff: May I inquire, Judge, how long

732 we are staying so I can excuse some witnesses?

The Court: Well, I would like to sit tonight till five o'clock. I would like to begin tomorrow at ten.

Mr. Hart: Would you make it ten minutes to five? I have an appointment.

The Court: We will try to accommodate everybody. I don't want to inconvenience the jurors. I have to complete this case next week. I would like to finish this case by Wednesday. I don't like to bring the jurors back after Thanksgiving. We will

go to ten minutes of five and at ten o'clock tomorrow morning, and we may have to sit a little later. Let's see what progress we are making. I think everybody is cooperating here. I know you are, Counsel. 733

Mr. Hart: May I talk to your Honor?

The Court: Yes.

(Conference at the Bench.)

ROBERT T. SIMPSON, called as a witness on behalf of the Government, being first duly sworn, testified as follows: 734

Direct Examination by Mr. Rudykoff:

Q. Mr. Simpson, what is your business or occupation? A. I am a credit manager for a textile firm.

Q. And what is its name? A. Marvlo Fabrics, Inc.

Q. And what is the business of Marylo Fabrics? A. Textile converters.

Q. How long have you been connected with Marvlo? A. Eleven and a half years.

Q. In the same capacity? A. Yes.

Q. How long has Marvlo been in business? A. The original corporation was formed in 1925 as Marvlo Mills, and succeeded as Marvlo Fabrics in 1940. 735

Q. And do you know Deeb? A. I do.

Q. Do you see him in Court? A. I do.

Q. Will you indicate the person? A. He is the gentleman at the end.

The Court: Indicating the defendant Albert Deeb.

736 Q. Do you recall when you first saw him? A. It must have been March or April, 1945.

Q. Where did you see him? A. In my office at 62 Worth Street.

Q. Did you have a talk with him? A. I did.

Q. Will you tell us what he said and what you said? A. I don't of course remember the exact words. It was on the question of credit in relation to some orders that had been placed with my house.

Q. Orders for whom? A. Orders for Daisart Sportswear.

737 Q. What did he say, if anything, about his connection with Daisart Sportswear? A. To my recollection he didn't mention any connection with Daisart Sportswear.

Q. Did he have a document with him? A. Not that I know of.

Q. Did you discuss plans? A. We did.

Q. What did you say and what did he say? A. I suggested in view of the lack of a credit line which could not be granted to Daisart Sportswear, that a cash deposit would have to be placed with my firm in connection with orders which we had on hand.

738 Q. Did you state the amount that you require? A. I did.

Q. How much was it? A. $10,000.

Q. What kind of an order were you discussing? A. A priority order for rayon fabric.

Q. Was that sum paid? A. I beg your pardon?

Q. Was that sum paid? A. In dollars? I think, as I recollect, it must have been around seventy or eighty thousand dollars.

Mr. Siegel: I object to it. He is talking about a 739
$10,000 deposit. He asked whether that sum was paid.

The Court: You mean the orders pending were in the amount of seventy or eighty thousand dollars?

The Witness: I thought that was the question.

Q. I am talking about the initial deposit. A. I am sorry. The amount of $10,000 was paid.

Q. And did you see Deeb thereafter? A. I did.

Q. About how many times? A. Twelve or fifteen times 740
at least.

Q. Where did you see him? A. In my office in the premises of 62 Worth Street.

Q. And on those occasions with regard to what did you see him? A. On those occasions he called to pick invoices for merchandise which the mill had reported as being ready to ship.

Q. Were payments made on those occasions? A. Generally not.

Q. Were payments made by him on some occasions? A. I believe that on some few occasions checks were left 741
with me by Mr. Deeb.

Q. What did you do with the invoices when he called? A. They were given to Mr. Deeb.

Q. And some time thereafter was payment made according to the terms of the invoice? A. Yes.

Q. Now I show you Government's Exhibit 48, for identification. Is that the original ledger account which sets forth transactions with Daisart Sportswear? A. That is.

Q. And does that set forth all of the transactions had with that company? A. It does.

742 Mr. Rudykoff: I offer it in evidence.

The Court: Your company is Marvlo?

The Witness: Marvlo.

Mr. Hart: No objection to 48.

Mr. Siegel: Objection on behalf of Deeb unless it is connected.

The Court: Objection overruled. It is received without any reservation as to both defendants.

(Exhibit 48 for identification received in evidence.)

743 Q. I show you Government's Exhibit 45, for identification, and ask you if the documents under that exhibit number relate to a transaction with Daisart Sportswear involving an order for 280,000 yards of material? A. Yes, it does.

Q. And I show you Government's Exhibit 46, for identification, and ask you if the documents under that exhibit number relate to an order for 100,000 yards submitted to you by Daisart Sportswear? A. It does.

Q. And I show you Government's Exhibit 47 for identification, and ask you if that is a duplicate original of a letter mailed to Daisart Sportswear? A. It is.

744 Q. And appended to it is a white sheet. Do you know anything about that? A. I recognize the writing on it and apparently it is directions for shipment of the merchandise covered by the orders.

Mr. Rudykoff: I offer in evidence 46, 45 and 47 for identification.

Mr. Siegel: Are you offering these in evidence?

Mr. Rudykoff: Yes.

Mr. Siegel: Well, 47, this letter which was sent to Daisart Sportswear Company, I will object to

this upon the ground it is not binding upon the de- 745
fendant Deeb and there is some memorandum of Marylo that has been affixed to this letter which is not in any way connected with the letter and I don't think it belongs as part of this exhibit. I object unless it is removed from the letter.

Mr. Rudykoff: I will agree to offer the letter without at this time offering the white sheet. I will not refer to it until we complete the next witness.

The Court: All right, the objection is overruled, then, Counsel.

Mr. Hart: I have no objection to 45 and 46 and 746
that part of 47 which is now before the Court.

Mr. Siegel: Will you remove that white sheet?

Mr. Rudykoff: No.

Mr. Siegel: If you are going to submit it to the jury—

Mr. Rudykoff: Not at this time.

The Court: He will not submit it to the jury until it is offered in evidence, if it is.

Mr. Rudykoff: I offer 45, 46 and 47.

The Court: What is 45?

Mr. Rudykoff: That is an order for 280,000 yards 747
which relates to Count 23.

Exhibit 46 is an order for 100,000 yards which relates to Count 29.

May I, at this time, read part of 45 and 46?

The Court: All right.

Mr. Rudykoff: (To the jury) Exhibit 45 is a letter on the stationery of Daisart Sportswear, Inc., dated March 28, 1945, addressed to Marylo Fabrics, of 1412 Broadway, New York City (reading).

748 Exhibit 46 is an order on the stationery of Daisart Sportswear, Inc., dated May 25, 1945 addressed to Marylo Fabrics, describing an order as follows (reading).

Q. Now what are taffetas commonly used for, Mr. Simpson? A. I don't know.

Q. You are concerned only with records, is that correct? A. That is true.

Q. In relation to billing, is it the usual and customary practice to bill by describing the textiles by case number and
749 yardages? A. Yes.

Q. Is that uniform throughout the industry? A. Generally accepted as far as I know.

Mr. Rudykoff: You may inquire.

Cross Examination by Mr. Siegel:

Q. Mr. Simpson, you knew the first time when you met Mr. Deeb, he was what is commonly called a broker or finder to get hold of materials in the market? A. I did not.

Q. Well, you knew at that time there was a shortage
750 of materials around? A. Yes.

Q. And that there were brokers, or what we call finders, who would find sources of materials for people who require them? A. I know there are such persons.

Q. And they usually worked on some brokerage or commission arrangement to find the materials for people who required the material when things were tight? A. I knew there was such a thing as a broker. I don't know how the remuneration was handled.

Q. You knew when you met Mr. Deeb that he was a broker

with an office at 220 Fifth Avenue, for the purpose of find- 751
ing materials, seeking materials? A. I had no such knowledge.

Q. When you dealt with Mr. Deeb at the time when you had these conversations, was it in connection with getting materials for someone? A. No.

Q. It was not for himself, was it? A. I misunderstood your question.

Q. When you first discussed with Mr. Deeb about these orders that you had available, these materials that you had available, you knew you were not selling them to Mr. Deeb? A. Oh, yes. 752

Q. Did Mr. Deeb tell you who he needed the materials for? A. It was the Daisart Sportswear.

Q. Did he discuss with you whether you could obtain such materials? A. No.

Q. The first conversation that he had with you, you mentioned something about discussing credit? A. That was my province.

Q. Well, did Mr. Deeb come in and discuss credit for the Daisart Corporation without first apprising you whether the Daisart was looking for materials? A. No.

Q. Well, had you already received an order from Daisart 753
before you discussed the matter with Mr. Deeb? A. Yes.

Q. Did Mr. Deeb bring the order to you? A. Not to me.

Q. Did somebody else get the order in your place? A. Someone else must have gotten it.

Q. You didn't take care of the actual receipt of orders, did you? A. No.

Q. You don't know who got the order, who sent the order? A. No, I don't know.

Q. You only know the transaction when it gets into the credit department? A. That is right.

754 Q. And then you had some conversation with Mr. Deeb in connection with credit extension for that order? A. Yes.

Q. For the Daisart Sportswear, that was, who purchased these materials, is that correct? A. That is correct.

Q. You never received any written order, any kind of paper from Mr. Deeb in connection with these orders? A. No.

Q. You never sent any written bill or any memorandum of any kind to Mr. Deeb, did you? A. No.

755 The Court: But you did give Mr. Deeb invoices?

The Witness: Yes, personally.

Q. And those were invoices for the Daisart Corporation? A. Yes.

Q. You don't know the initial arrangements with respect to the order as it came in? A. No.

Q. You don't know what conversations took place between Mr. Deeb and the person to whom the order was given? A. I do not.

Q. As a matter of fact, you don't even know who brought the order in to your organization? A. I do not.

756

Cross Examination by Mr. Hart:

Q. Are you familiar with whether or not your concern sold unfinished goods? A. I am familiar with that.

Q. Did they? A. They did not.

Q. They were converters, were they? A. We were converters.

Q. And they handled no orders for unfinished goods? A. That is right.

Q. Did the price of the finished product depend to some 757
extent upon the color specified? A. I am not qualified to answer that.

Q. Do you know whether or not red and such colors as that are cheaper? A. Ordinarily they are more expensive. Heavier shades are more expensive.

Q. A bright shade is not a heavy shade? A. I would say, if you want my opinion—

The Court: Are you an expert in relation to costs of dyeing?

The Witness: No, I am not qualified. 758

The Court: He is a credit man.

Mr. Hart: All right.

The Court: Next witness.

(Witness excused.)

Mr. Rudykoff: Would you ask Mr. Simon to come in.

JACK H. SIMON, called as a witness on behalf of the Government, being first duly sworn, testified as follows: 759

Direct Examination by Mr. Rudykoff:

Q. Mr. Simon, what is your business? A. I am in the textile business.

Q. Under what name? A. Blue Simon Corporation.

Q. During 1945 were you identified with any firm? A. I was identified with Marvlo Fabrics, Inc.

Q. In what capacity? A. As assistant to the man who is running the rayon division.

760 Q. And where was the rayon division of Marylo located? A. 1412 Broadway.

Q. And during 1945 did you see Deeb? A. Yes, sir.

Q. Do you recognize him in Court? A. Yes, sir.

Q. Who is he? A. This gentleman sitting over here.

The Court: Indicating the defendant Deeb.

Q. Where did you see him? A. In our 1412 office.

The Court: 1412?

The Witness: 1412 Broadway.

761

Q. Can you approximate the time when you first saw him? A. No, sir, I don't remember.

Q. I show you Government's Exhibits 45 and 46, with particular reference to the orders in each case. Do you recall those orders? A. What is this? A photostat or something?

Q. Yes. Perhaps that is a little confusing. A. I don't recall this particular order. We sold goods—

Mr. Siegel: I object to this conversation that is

762 going on.

The Court: That is not a conversation; that is an answer to a question.

Q. Going back to the first occasion, did you have a conversation with him? A. With who, sir?

Q. With Deeb. A. About orders, sir?

Q. Yes. A. Yes, sir.

Q. And so far as you recall, what did he say and what did you say and what happened? A. Well, the conversation

was that he wanted to buy some goods, and we sold him some goods. 763

Q. And was he speaking with regard to rated orders? A. To rated orders, priority orders.

Q. Did you have a talk as to rating? A. Yes, sir.

Q. What was the talk in that connection? A. Well, that he had priorities which entitled him to place some orders for some goods.

Q. Well, after you had this talk, was there some talk about credit? A. Well, the credit angle I didn't handle.

Q. Who handled it? A. That was handled in our downtown office. 764

Q. And did you refer him to the credit department? A. The way things were handled, an order was taken and he would be sent down to the credit department.

Q. You took an order? A. That is right.

Q. And then he went to the credit department, and what happened after that you don't know? A. No, sir.

Q. About how many times did you see Deeb? A. I don't know the number of times.

Q. Can you approximate? Was it more than once? A. It was more than once.

Q. Was it a half a dozen times? A. Probably a half a dozen times. 765

Q. On those occasions when you saw him, what was the subject of the talk? A. The subject of the talk was about these orders and the delivery of the goods.

Q. I direct your attention to the white sheet attached to the Government Exhibit 47. Whose writing is it? A. Well, all but two lines of it is my printing.

Q. And on or about the time of that writing, did you have a talk with someone? A. Well, I had a talk with someone about how these goods were to be delivered.

766 Q. And with whom was that talk? A. I don't remember who.

Q. Is there any name on it?

Mr. Siegel: I object to it upon the ground the witness has just stated he does not remember, and now counsel is directing his attention to something.

The Court: Objection overruled at this time.

Q. Look at that sheet, read it and see if it refreshes your recollection. A. This letter, this copy wouldn't because I
767 didn't write this letter.

The Court: Do you recall the circumstances?

The Witness: The circumstances? We shipped these goods through Coppin's Transfer.

The Court: Who gave you those?

The Witness: I don't remember.

The Court: Did it come from the purchaser?

Mr. Hart: I move to strike that.

The Court: Motion denied.

Mr. Hart: You say it must have come—

The Court: I said did it come?

768 Mr. Hart: The witness said must have come.

The Court: I will let it stand.

By Mr. Rudykoff:

Q. I call your attention to the bottom writing on that page. Is that your writing? A. Yes, it is.

Q. Have you read it? A. Yes.

Q. Does it refresh your recollection? A. Judging by what I printed—

Mr. Siegel: I object to that. 769

The Court: Does it refresh your recollection?

A. Yes.

Q. What is your recollection now? A. My recollection from this on the bottom is that I was told over the phone by Mr. Deeb to ship the goods to this place.

Q. Did you make that entry at the same time? A. At the same time I got the message.

Q. Over the telephone? A. Yes, sir.

Q. Had you spoken to him before that occasion, to Mr. Deeb? A. When he placed his orders. 770

Mr. Siegel: I object to the answer and move that it be stricken out as not responsive to the question.

The Court: The motion is denied.

Q. Had you spoken to Mr. Deeb prior to that particular occasion? A. About the goods on order, yes.

Q. I asked you only had you spoken to Mr. Deeb prior to that particular occasion? A. Yes, sir.

Q. During the conversation did the person who spoke identify himself? A. Yes, sir; otherwise I wouldn't have put it down. 771

Mr. Siegel: I object. I move to strike it out.

Mr. Rudykoff: I consent.

Q. What did he say as far as identifying himself is concerned? What did he say his name was? A. Mr. Deeb.

Mr. Siegel: I object.

The Court: Objection overruled.

772 *By the Court:*

Q. Did you recognize the voice on the phone? A. I wouldn't recognize the voice on the phone.

Mr. Siegel: I move to strike it.

Q. After you were told by the person on the phone it was Mr. Deeb, did you then recognize his voice? A. I don't remember whether I recognized his voice, but if I made that notation, I must have been—

773 Mr. Siegel: I object to it and move that the answer be stricken out.

The Court: No, we will let it stand. Motion denied.

Mr. Rudykoff: I offer in evidence, your Honor, the white sheet attached to Government's Exhibit 47.

Mr. Hart: I object on behalf of the defendants Daisart and Smith. There is no evidence tending to connect it.

The Court: Your objection is overruled.

774 Mr. Siegel: I will object on behalf of the defendant Deeb, upon the ground that it is purely self-serving, there has been no foundation laid for its introduction.

The Court: It is a record made by this man.

Mr. Siegel: He says he doesn't remember.

The Court: Objection overruled, Counsel. It is received in evidence. It is considered part of the same exhibit.

Mr. Rudykoff: May I at this time read the exhibit?

The Court: Yes. 775

Mr. Rudykoff: (To the jury) White sheet attached to Exhibit 47 in evidence is on the stationery of Marvlo Fabrics, Incorporated. At the top appears in writing Charles Dinton—

The Witness: Dintonfas.

By Mr. Rudykoff:

Q. Is that portion in your handwriting? A. Yes, sir, everything but the street address.

Q. Who is Charles Dintonfas? A. He is in charge of the orders downtown. 776

Mr. Siegel: I will now move, in view of that explanation, that it not be admitted upon the ground there is now a writing which is not the writing of this witness.

Mr. Rudykoff: He says it was his.

The Court: You have made a proper objection and protected the rights of your client. I overrule your objection. It is in evidence.

Mr. Rudykoff: Underneath that in handwritten print is the following: "Shipped to Daisart Sportswear, Inc., 99 Central Avenue, Newark, New Jersey." 777 Down below, Coppin's Transfer, 230 Fifth Avenue, New York City, and below that in handwritten print, "Mr. Deeb over phone gave these shipping directions," and lower left-hand corner April 12, 1945.

Exhibit 47 is a typewritten duplicate original of a letter dated April 13, 1945, addressed to Daisart Sportswear, Inc., 99 Central Avenue, Newark, New Jersey (reading Exhibit 47).

778 Mr. Rudykoff: You may inquire.

Mr. Hart: I have no questions.

The Court: Did you open this account with Daisart?

The Witness: I was present when the account was opened.

Mr. Siegel: That is what I was just coming to.

The Court: Excuse me.

Cross Examination by Mr. Siegel:

779 Q. Mr. Simon, you didn't take the original order on this account, did you? A. I was present when the goods were sold.

Q. Who was Mr. Blue? A. He was head of the department.

Q. And Mr. Blue was the fellow who took the orders? A. We both took the orders.

Q. But these particular orders we are discussing here were taken by Mr. Blue? A. We did.

Q. Were you there every time that Mr. Blue— A. I wasn't there every time, no, sir.

Q. Isn't it a fact that Mr. Deeb had his conversations 780 with Mr. Blue when he— A. If I wasn't there every time, he must have had some conversation.

Q. Isn't it a fact when these orders were placed that he had this conversation with Mr. Blue? A. Mr. Blue handled some of the transactions, and I handled some. I don't remember which ones.

Q. You knew that Mr. Deeb was what was commonly termed a broker or finder of materials? A. That is right.

Q. And you knew that he was the type of individual who would go to many places to obtain materials for people

who were interested in getting them at that time? A. Right. 781

Q. You knew that materials were quite scarce then? A. Right.

Q. As a matter of fact, in the latter part of 1945 you had some business dealings with Mr. Deeb, didn't you? In the fall of 1945? A. What? In regard to these?

Q. No, when Mr. Deeb spoke to you about getting materials for a corporation known as the D & A Corporation, or the Lindcraft Corporation? A. Right.

Q. At 1182 Broadway? A. Right.

Q. Did Mr. Deeb place any orders with you directly? 782
A. Some of those orders he placed.

Q. That is, for these corporations, the Lindcraft and the D & A Corporation? A. Right.

The Court: Did he make any purchases for his own account?

The Witness: Yes, through those corporations.

Q. That has nothing to do with the orders we are discussing today?

Mr. Rudykoff: Well, if it hasn't, I object. 783

The Court: I think it is remote.

Mr. Siegel: I just want to show the dealings.

The Court: All right, the witness has testified that subsequently he purchased orders for his own account.

Q. And all of these orders we are discussing now were orders for the Daisart Corporation, is that right? A. Yes, that is right.

Q. All for the Daisart? A. Right.

784 Q. No bills to Mr. Deeb of any kind or nature? A. Well, I wouldn't have handled the bills; that is handled through the credit department.

Q. The orders were written to the Daisart Sportswear? A. That is right.

Q. There were no orders written to Mr. Deeb at all? A. That is right.

By the Court:

Q. Well, Mr. Deeb at 1412 Broadway, he visited you
785 there at about the time these orders were placed? A. I don't remember the exact dates.

Q. Was it at or about that time? A. At or about that time.

The Court: All right, thank you very much. You have some questions?

Mr. Rudykoff: No.

The Court: All right, you don't have to wait.

(Witness excused.)

786 Mr. Rudykoff: Mr. Rosen.

HARRY ROSEN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

Q. Mr. Rosen, what is your business or occupation? A. I am in the textile business.

Q. Did you some time in 1945 have some transaction with or concerning Daisart Sportswear, Inc.? A. I did. 787

(Government Exhibit 49 received and marked for identification.)

Q. How many transactions did you have with that particular concern? A. Just one.

Q. And with whom did you speak? A. I don't recall the name of anyone I spoke to.

Q. Were they telephone calls? A. That is right.

Q. And as a result of that call did you see someone? A. No, I did not. 788

Q. Did you speak to someone? A. I did.

Q. Of what firm? A. The firm was the Daisart Sportswear Company.

Q. And with whom of that firm did you speak? A. I only found out after I secured the order it was a Mr. George Smith.

Q. Did you secure an order? A. I personally did not. I represented them as a broker. In other words the call was given to me and I was asked whether I had these goods. I told them at the moment I did not have the goods. They told me there was a priority involved. I told them with a priority I might be able to secure them.

Q. Was this conversation with the person you later found was George Smith? A. That I don't know.

Q. Did you turn that order over to someone? A. Yes.

Q. To whom? A. To the Regal Equipment Company.

Q. With whom of that company did you speak? A. With Mr. Stein.

Mr. Rudykoff: You may inquire.

790

Cross Examination by Mr. Hart:

Q. Did you ever see Mr. Smith? A. No, sir.

Q. You had a phone conversation with somebody, is that right? A. That is correct.

Q. You had never spoken to that party before? A. No, sir.

Q. You had never seen the party you spoke to over the telephone? A. No.

Q. You never saw him since? A. No, sir.

791

Mr. Siegel: No questions.

(Paper received and marked Government Exhibit 50, for identification.)

(Witness excused.)

Mr. Rudykoff: Mr. Stein.

MORRIS STEIN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

792

Direct Examination by Mr. Rudykoff:

Q. Mr. Stein, what is your business or occupation? A. I am a partner in the Regal Equipment Company, jobbers of textiles.

Q. How long have you been engaged in the textile industry? A. Since 1924, for myself.

Q. And Regal Equipment Company is engaged in what branch of the business? A. Well, we sell cotton goods.

Q. Do you job? A. Job, that is right. 793

Q. Now, a jobber is someone who sells the goods in the condition that he buys them in, is that correct? A. That is correct.

Q. Do you know a Mr. Rosen? A. Yes, sir.

Q. And did you receive an order from him? A. Well, I received many orders from him. He sold goods for us from time to time.

Q. Very well. Did you receive an order from him which related to Daisart Sportswear? A. Verbally, and the order was confirmed later.

Q. Now I show you Government's Exhibit 49, for identification, and ask you if that relates to an order dated March 21, 1945, and whether the duplicate original invoices attached to it relate to that order? A. Yes, sir; they do. 794

Q. Now, what happened to the original invoices? A. They were mailed to Daisart Sportswear Company.

Q. And were they paid? A. They were paid for; yes, sir.

Q. I show you Government's Exhibit 50, for identification, Is that your original ledger account with relation to Daisart Sportswear, Inc.? A. Yes, sir.

Mr. Rudykoff: I offer Exhibit 49 for identification and 50 for identification in evidence. 795

The Court: This refers to what count?

Mr. Hart: It refers to Count 21, your Honor.

Mr. Rudykoff: That is correct.

The Court: (To the witness) You only received one order?

The Witness: One order, yes, your Honor.

Mr. Hart: No objection on behalf of Daisart and Smith.

796 Mr. Siegel: Object to it on behalf of the defendant Deeb unless it is connected.

The Court: Received in evidence subject to your right to move to strike out.

(Government Exhibit 49, for identification, received in evidence.)

Mr. Rudykoff: May I read the order, please?

The Court: Yes.

Mr. Rudykoff: 49 in evidence is on the stationery
797 of Daisart Sportswear, dated March 21, 1945, addressed to Regal Equipment Co. (reading).

Q. The material described here is cotton bleached? A. That is right.

Q. Is that a finished material? A. That is a finished cotton.

Q. What are some of the uses that a 68 by 64 cotton is put to? A. In the bleached state they are put to use in handkerchiefs, slips, and various other items.

The Court: It is a finely woven white material?

798 The Witness: Yes.

Q. And 96 by 100 cotton bleached is what kind of fabric? A. That is a combed cotton.

Q. What is that generally used for? A. Well, those are used for more expensive handkerchiefs.

Mr. Rudykoff: You may inquire.

The Court: It is not comparable to canvas?

The Witness: No, no; this is a fine cotton, your Honor.

Q. What is sateen? A. Sateen is the type of weave, a twill weave.

Q. What kind of a surface does it have? A. It has a smooth surface when finished.

Q. Shiny? A. Shiny, that is right.

Mr. Rudykoff: You dropped your voice. You said "when finished"?

The Witness: When finished, that is correct.

Q. You sold only finished merchandise? A. That is right. 800

Q. As a matter of fact, unfinished merchandise was very, very scarce in the market? A. Well, finished merchandise was also scarce in the market.

Q. The average jobber or average converter wasn't passing on gray goods? A. They were on priorities.

Q. They were if they sold finished goods? A. Not necessarily.

Q. Was there a scarcity of finished goods? A. There was a scarcity of everything.

Q. Was there a particular scarcity of white goods? A. There was a great scarcity of white goods. 801

Q. And that scarcity was created by the lack of desire on the part of the converter to sell goods unless it was dyed, so he could get the money for dyeing? A. I don't think I should answer that question. It is out of my jurisdiction. I am a jobber.

Q. Did you have difficulty getting white shirts? A. Yes.

Mr. Rudykoff: I will concede that.

802 Q. You could get plenty of colored shirts? A. Not necessarily. I couldn't get colored, either.

(Witness excused.)

HUBERT A. KELLY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

Q. Mr. Kelly, what is your occupation? A. I am man-
803 ager of the order department, Southeastern Cottons, Inc.

Q. What is the business of Southeastern Cottons? A. We are selling agents for a group of textile mills.

Q. And how long have you been connected with Southeastern? A. About twenty-five years—thirty years, I guess.

Q. How long is Southeastern in business? A. Oh, well, Southeastern—I beg your pardon?

Q. That is right, you did answer the question. How long is Southeastern in business now? A. I think they're in business about three or four years. It was originally other
804 companies, and it worked up to Southeastern, but it is the same organization.

Q. What are some of the mills they represent? A. Clifton Manufacturing Company, Spoffard Manufacturing Company, Avondale Mills, Kowikee. That is some of them, not all of them.

Q. Did your concern do some business with Darsaf Sportswear in 1945? A. Yes, sir.

Mr. Rudykoff: Mark these, please. 805

(Same received and marked Government Exhibits 51 and 52, for identification.)

Q. I show you Government's Exhibit 51, for identification, and 52 for identification. With regard to 51 for identification, do the documents relate to an order received by you from Daisart Sportswear, Inc. on or about February 21, 1945? A. All of these documents?

Q. Yes. A. Yes, they do. This is a copy of a letter written to Daisart by our credit department, and this is 806
a copy of an invoice—two copies of invoices here totaling approximately 100,000 yards.

Q. Do they relate to the same order? A. Yes, sir.

Q. And is that order set forth upon the top sheet on letterhead dated February 21, 1945? A. Well, this is a letter from Daisart asking us to enter the order which we did.

Q. And the other documents relate to that order? A. Yes, they do.

Q. Very well. Would you look at Government's Exhibit 52 for identification, and tell us whether that is the ledger account setting forth the transactions had with Daisart 807
Sportswear, Inc.? A. It is, sir.

Q. And does that set forth all of the transactions had with Daisart? A. As far as I know, it does.

Q. On what terms did you deal with Daisart? A. I believe the terms were cash with the order.

Mr. Rudykoff: I offer in evidence 51 for identification and 52 for identification.

Mr. Hart: No objection.

808 Mr. Siegel: Same objection for the defendant Deeb.

The Court: Received in evidence, subject to your right to move to strike out.

(Government Exhibits 51 and 52, for identification, received in evidence.)

Q. Are you familiar with the construction of the materials? A. No, not particularly.

809 Mr. Rudykoff: May I at this time read from 51?

The Court: Yes.

Mr. Rudykoff: On the stationery of Daisart Sportswear is an order dated February 21, 1945, addressed to Southeastern Cottons, Inc., 58 Worth Street (reading).

Attached to it is a letter dated March 2, 1945 (reading).

Q. Now, were these shipments paid for in full, Mr. Kelly? A. Yes, sir, they were.

810 Mr. Rudykoff: You may inquire.

Cross Examination by Mr. Hart:

Q. Do you recall who placed that order? A. I do not, sir.

Q. Did you ever see the defendant Smith? A. No, I did not.

Q. Do you know a Mr. Leonard Forkish? A. I do not, sir.

Q. Never heard of him? A. No, sir. 811

Q. And you were not the one who received that order in your place, were you? A. I was not.

Mr. Hart: That is all.

Cross Examination by Mr. Siegel:

Q. Do you know a Mr. Deeb at all? A. Mr. Deeb?

Q. Yes. A. I do not.

Q. Never saw him? You have never seen Mr. Deeb? A. No.

812

Mr. Siegel: That is all.

The Court: All right, thank you very much.

Mr. Rudykoff: That is all. Would you ask Mr. Ackerman to come in.

The Court: We will try to complete the next witness, if possible. If you need more time for cross examination, we will adjourn.

Is this going to be a long witness?

Mr. Rudykoff: There is quite a number of transactions.

The Court: Would you prefer to start with the witness now? 813

Mr. Rudykoff: I assume there will be some cross examination and since he will have to return tomorrow in any event, I would just as soon start tomorrow.

The Court: I have been working under pressure.

Mr. Rudykoff: I am willing to stop.

The Court: I don't want to push you beyond your physical endurance but I know the problems that both you and defendants' counsel have.

814 You return tomorrow and we will try to take you as the first witness.

Ten o'clock. We will declare a recess now, and we will adjourn till ten o'clock tomorrow morning.

(Off the record.)

And then come here and begin the trial at ten o'clock. The usual admonition I have always given you at times of adjournment holds. I won't repeat it. 9:30 tomorrow morning in Room 109, and 10:00 o'clock here.

815 (Adjourned to November 20, 1947, at 10:00 A.M.)

New York, November 20, 1947.
10:00 o'clock a.m.

Trial resumed.

(Government's Exhibits 53 to 68 inclusive marked for identification.)

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816 JACK ACKERMAN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

Q. Mr. Ackerman, what is your business? A. I am employed by a textile converter. I am credit manager and assistant treasurer.

Q. What is the name of the concern? A. A. Steinam Company, Inc.

Q. How long have you been employed by them? A. About 15 years. 817

Q. And how long have you been employed in the capacity of credit manager? A. About five years.

Q. Do you know of the firm of Daisart Sportswear, Inc.? A. I do.

Q. And did your firm have certain transactions with that firm during 1944 and 1945? A. We did.

Q. I show you Government's Exhibit 55 for identification. Will you please examine it and tell us whether that exhibit contains documents relating to an order of Daisart, dated December 13, 1944? A. They do. 818

Q. And are these documents kept in the regular course of business of Steinam Company? A. They are.

Q. And the invoices attached to this exhibit, are they duplicate originals of invoices and made at the same time as the originals? A. That is right. They are photostatic copies of the original invoices.

Mr. Rudykoff: I offer Government's Exhibit 55 for identification in evidence (handing to Mr. Hart).

Q. I show you Government's Exhibit 56 for identification. Will you please examine that and tell us whether it contains documents relating to an order of Daisart dated December 15, 1944? A. Yes, sir, they do. 819

Q. And are these documents those which were kept in the regular course of business during the period in question? A. They are.

Mr. Rudykoff: I offer Government's Exhibit 56 for identification in evidence (handing to Mr. Hart).

Mr. Hart: No objection to 55.

820 Mr. Siegel: Objection on behalf of the defendant Deeb unless it is connected.

The Court: Received, and subject to a motion to strike if not connected. Sustained as to your client unless it is connected.

Mr. Rudykoff: May I read Government's Exhibit 55, if the Court please?

(Government's Exhibit 55 for identification received in evidence and read to the jury by Mr. Rudykoff.)

821 The Court: And that was a total of how much yardage?

Mr. Rudykoff: 50,000, and that relates, if the Court please, to count 2.

Q. Mr. Ackerman, will you please examine Government's Exhibit 57 for identification and tell us whether that contains documents relating to an order dated December 20, 1944, received from Daisart? A. Yes, sir, it does.

Q. And were those documents kept in the regular course of business of Steinam Company? A. They were.

822 Mr. Rudykoff: I offer 57 for identification in evidence (Handing to Mr. Hart).

Have you examined 56?

Mr. Hart: Yes. There is no objection.

Mr. Siegel: Same objection.

The Court: Same ruling.

Mr. Rudykoff: I offer in evidence 56 for identification.

(Government's exhibit 56 for identification received in evidence.)

Mr. Rudykoff: May I read 56, if the Court please? 823

The Court: Yes.

(Mr. Rudykoff read Government's Exhibit 56 in evidence to the jury.)

Mr. Rudykoff: That is with reference to count 2.

The Court: And that is for white cotton goods, not poplin.

Mr. Rudykoff: 20,000 yards white.

The Court: Yes. 824

Q. Mr. Ackerman, will you please examine Government's Exhibit 58 for identification, and tell us whether that relates to an order from Daisart, dated January 10, 1945. A. It does.

Q. And are those documents kept in the regular course of business of the Steinam Company? A. They are.

Mr. Rudykoff: I offer 58 for identification in evidence (handing to Mr. Hart).

Q. Will you please examine 59 for identification and tell us whether that relates to an order identified by your sales note dated February 16, 1945, and relating to an order of Daisart Sportswear, Inc.? A. It does. 825

Q. And are those documents kept in the regular course of business of Steinam Company? A. They are.

Mr. Rudykoff: I offer 59 for identification in evidence (handing to Mr. Hart).

Mr. Hart: No objection to 57 and 58.

Mr. Rudykoff: I offer 57 for identification and 58 for identification in evidence.

826 Mr. Siegel: Same objection.

The Court: Same ruling as to your client.

(Government's Exhibits 57 and 58 for identification received in evidence.)

Mr. Rudykoff: May I read from these, your Honor?

The Court: Yes, sir.

Mr. Rudykoff: 57, if the Court please, refers to count 3 and 58 refers to count 4.

827 (Mr. Rudykoff read Government's Exhibits 57 and 58 to the jury.)

Q. Mr. Ackerman, will you please examine Government's Exhibit 60 for identification and tell us whether the documents thereto attached are related to your sales note of February 23, 1945, describing an order from Daisart Sportswear, Inc.? A. They are.

Q. And are those kept in the regular course of business of Steinam Company? A. They are.

828 Mr. Rudykoff: I offer 60 for identification.

Mr. Hart: No objection as to 59.

Mr. Rudykoff: I offer in evidence Government's Exhibit 59 for identification.

Mr. Siegel: Same objection.

The Court: Same ruling as to your client.

(Government's Exhibit 59 for identification received in evidence.)

Mr. Rudykoff: May I read 59 in evidence, if the Court please? 829

The Court: Yes, sir. And that refers to what count?

Mr. Rudykoff: Count 11.

(Mr. Rudykoff read Government's Exhibit 59 to the jury.)

Q. Mr. Ackerman, are you familiar with Division Factors? A. Slightly.

Q. And does the abbreviation Div. and Fac. on Government's Exhibit 59 relate to Division Factors? A. It does. 830

Q. And below that fin., what does that mean? A. That means finished goods.

Q. And Div. A. Divisional.

Q. Divisional factor? A. That is right.

Q. Indicating two separate divisional factors, is that right? A. Yes, that is right.

Q. One relating to the grey and the other to the finished? A. That is right.

The Court: What is a divisional factor?

Mr. Rudykoff: In view of the fact that it is of a slightly technical nature, I should prefer to ask that of another witness, if that is agreeable, your Honor. 831

The Court: That is all right. I simply think that the jury should be informed.

Mr. Rudykoff: Oh, yes, I expect to do that.

The Court: Excuse me for anticipating.

Mr. Rudykoff: That is perfectly all right. I make that statement in view of the fact that I asked him

832 that with that in view, and in view of his answer I will refrain from asking him further at this time.

Q. Will you please examine Government's Exhibit 60 for identification, Mr. Ackerman, and tell us if that relates to an order of Daisart, dated February 28, 1945.

Mr. Rudykoff: While the witness is examining that I should like to offer 60 for identification in evidence.

Mr. Siegel: Same objection on behalf of the de-
833 fendant Deeb.

The Court: Same ruling.

(Government's Exhibit 60 for identification received in evidence.)

Mr. Rudykoff: May I read 60 in evidence, referring to count 14?

The Court: Yes, sir.

(Mr. Rudykoff read Government's Exhibit 60 to the Court and jury.)

834 A. There are two letters here from Daisart which total 125,000 yards. Our confirmation called for 100,000 yards and it seems to still so indicate, that the first letter and the invoices total 100,000 yards.

Q. Are you referring to Government's Exhibit 61 for identification? A. Yes.

Q. And do the invoices tie in with the 100,000 yards? A. It does.

Q. Referred to in the letter dated February 28, 1945? A. It does.

Mr. Rudykoff: I offer 61 for identification in evi 83
dence (Handing to Mr. Hart).

The Court: The date of the order in Exhibit six was what, Mr. Rudykoff?

Mr. Hart: February 23rd.

Mr. Rudykoff: That is the date of the sales note, and that refers to count 14.

The Court: Yes. And that was what yardage?

Mr. Rudykoff: 25,000.

Q. Mr. Ackerman, will you examine 62 for identification, and tell us whether the documents attached refer to an 83
order described in your sales note of April 5, 1945? A. It does.

Q. And were those documents kept in the regular course of business of Steinam Company? A. They are.

Mr. Rudykoff: I offer 62 for identification (handing to Mr. Hart).

I offer in evidence 61 for identification.

Mr. Siegel: Same objection.

The Court: Received. Same ruling.

(Government's Exhibit 61 for identification received in evidence.)

Mr. Rudykoff: 61 relates to count 17, and is dated February 28, 1945, 100,000 yards.

May I read it to the jury, your Honor?

The Court: Yes.

(Mr. Rudykoff read Government's Exhibit 61 to the Court and jury.)

838 Q. Mr. Ackerman, will you please examine 63 for identification, and tell us whether the documents relate to an order of Daisart dated June 7, 1945? A. They do.

Q. And will you also examine 64 for identification, and tell us whether they are documents which relate to an order of Daisart, dated on or about July 27, 1945? A. You say July 27th?

Q. I beg your pardon. It should be July 12th, is that right? A. Yes, July 12th; yes, sir, that is right.

Q. And with that amendment are the documents in relation to that order? A. They are.

839

Mr. Rudykoff: I offer 63 and 64 for identification (handing to Mr. Hart).

Q. With regard to 62 for identification can you tell us whether an order, a written order, was received from Daisart other than the acceptance indicated on the first page, lower lefthand corner? A. No, sir, I could not tell from this.

Mr. Hart: What is the answer?

Mr. Rudykoff: He said he could not tell from

840 that.

I offer 62 for identification in evidence.

Mr. Hart: No objection.

Mr. Siegel: Same objection as to the defendant Deeb.

The Court: Same ruling.

(Government's Exhibit 62 for identification received in evidence.)

Mr. Rudykoff: 62, if the Court please, refers to count 24, and the yardage is 100,000. 841

May I at this time read from it?

The Court: Yes, sir.

(Mr. Rudykoff read Government's Exhibit 62 to the Court and jury.)

Mr. Rudykoff: I offer 63 for identification.

Mr. Siegel: Same objection as to the defendant Deeb.

The Court: Same ruling.

(Government's Exhibit 63 for identification received in evidence.) 842

Mr. Rudykoff: 63 relates to count 30 and is for 50,000 yards.

I should like to read from that at this time.

The Court: Yes.

(Mr. Rudykoff read Government's Exhibit 63 to the Court and jury.)

Q. Mr. Ackerman, that is a very high count, is it not? A. I am not too familiar with the merchandise and I don't know how that would be considered. 843

Q. Thank you.

Mr. Rudykoff: I offer 64 for identification.

Mr. Siegel: Same objection for the defendant Deeb.

The Court: Same ruling.

(Government's Exhibit 64 for identification received in evidence.)

844 Mr. Rudykoff: 64 relates to count 39 and is for 2775 yards.

The Court: Yes.

Q. Mr. Ackerman, can you tell us something about the order of Daisart, whether you had it, or just where it might be? A. If there was a written order covering this, it would have been in our file. I wouldn't know.

Q. Do you have any personal knowledge as to whether there was any such order? A. No, I have not.

Mr. Rudykoff: May I read 64, if the Court pleases?

845 The Court: Yes.

(Mr. Rudykoff read Government's Exhibit 64 to the Court and jury.)

Q. Mr. Ackerman, please examine 53 for identification and tell us whether that exhibit consisting of three sheets refers to the original ledger account setting forth all transactions had by and with Daisart Sportswear, Inc. from December, 1944, to date.

Mr. Hart: What exhibit number is that?

The Court: 53 for identification.

846 Mr. Rudykoff: 53 for identification.

The Court: The ledger account?

Mr. Rudykoff: Yes, sir.

The Witness: It does.

Mr. Rudykoff: I offer it in evidence. (Handing to Mr. Hart.)

Mr. Siegel: The same objection.

The Court: The same ruling.

(Government's Exhibit 53 for identification received in evidence.)

Q. Mr. Ackerman, I direct your attention to certain 847
initials appearing on the first page of 53, N C B R. Will you tell us what that means? A. That means net cash by return mail.

Q. Can you state from the examination of this Exhibit 53 the total amount of charges made to Daisart? A. I would have to add them up, the charges on the debit side.

The Court: They are not footed in pencil by the bookkeeper?

The Witness: No. As the payments are made they are deducted from the account. 843

Q. Is that a machine-kept account? A. Oh, yes.

Q. Automatic? A. That is right.

Q. And you carry daily balances, is that correct? A. Yes.

Q. Somewhat like the banks do? A. That is right.

Q. Now, do you know George Smith? A. I do.

Q. Do you recognize him? A. I do.

Q. Will you indicate the individual? A. The second from the left at the table over there (indicating).

Mr. Rudykoff: Indicating the defendant George 849
Smith.

Q. When did you first meet him?

Mr. Hart: Let us have this correct. Second from the left?

The Court: He indicated from the right.

The Witness: From my left, I mean.

Mr. Hart: Second from the right.

The Court: Yes.

850. A. I met Smith either in the latter part of 1944, or the early part of 1945.

Q. And did you have some conversation with him? A. I did.

Q. And did you have some talk about powder bags? A. No, not about powder bags.

Q. What was the conversation? A. My talks with Smith were pertaining to credit arrangements on the orders.

Q. And what was said? A. Well, the orders were quite substantial, and we arranged for him to give us a deposit and accepted the orders at that time on a cash basis.

851 Q. Were all these orders priority orders? A. Yes, they were all priority orders.

Q. Was this account guaranteed? A. The original transactions were guaranteed.

Q. By whom? A. By Len Sportswear Company.

Q. And was the amount paid in full? A. It was.

Q. Is there any outstanding balance? A. There is no outstanding balance.

Q. I submit to you for examination Government's Exhibit 54 for identification. Will you describe that, please? A. This is a copy of a letter that I wrote on December 18th to Len Sportswear Company.

852 Q. And does it relate to the guarantee? A. It does.

Q. Was that sent by virtue of some arrangement you made with Mr. Smith? A. It was made with Mr. Forkish, and Mr. Smith agreed to it.

Q. And is there attached to it a copy of the guarantee? A. Yes.

Q. The third document annexed to that is one dated December 20, 1944. Did you receive that from Daisart? A. We did.

Jack Ackerman—for Government—Cross

Q. And attached to that is an envelope. Is that the en- 853
velope in which one of the documents was received? A. It is.

Q. And is that an envelope imprinted with the name Daisart? A. It is.

Mr. Rudykoff: I offer 54 for identification (handing to Mr. Hart).

Mr. Hart: No objection.

Mr. Siegel: Same objection on behalf of the defendant Deeb.

The Court: Same ruling. 854

Q. Mr. Ackerman, was the original of the guarantee returned? A. It was.

Q. And do you have a memorandum to that effect in your writing? A. I have.

Q. Under what date? A. May 18, 1945.

Mr. Rudykoff: May I at this time read Exhibit 54?

The Court: Yes, sir.

(Government's Exhibit 54 for identification received in evidence and read to the jury.) 855

Mr. Rudykoff: You may inquire.

Cross Examination by Mr. Hart:

Q. Mr. Ackerman, I show you Exhibit No. 55, and ask you if there is any end use specified on there? A. You mean on Daisart's letter of December 13th?

Q. That is right.

856 Mr. Rudykoff: I will take your statement on that, Mr. Hart.

Mr. Hart: I could not find any, and I wanted to see if there was any end use.

A. No, there is no end use indicated on the letter of December 13th.

The Court: Is there any end use indicated in connection with that order by any of those papers?

The Witness: The specific end use does not seem to be indicated on any of these papers.

857 The Court: All right.

Q. I ask you the same question with respect to Exhibit 59.

The Court: Maybe we could save some time, Is there any end use specified in any of these papers? I mean the papers really speak for themselves.

Mr. Rudykoff: The answer as to 59 will be No. I will so stipulate.

The Court: All right. It appears from an examination of 59 that no end use was specified, or set forth.

858

Q. Do you charge the same price for seconds as you do for regular material? A. No, sir. To the best of my recollection seconds were always subject to a discount.

Q. And did you ship any seconds to Daisart? A. I don't know.

Q. I show you Exhibit 60 and ask you whether or not you shipped seconds in connection with that order? A. Yes, sir. I see there were 183 yards of seconds.

The Court: And they were so billed? 859
The Witness: They were so billed, as was indicated on the invoice, and also subject to a 15 per cent discount as indicated on the invoice.

Q. Now, your concern does not manufacture, does it? A. No, we are converters.

Q. Did you sell any grey goods during that period to Daisart? A. To the best of my knowledge we only sold them finished goods.

Q. Did you sell grey goods to anybody? A. I don't think we did. I don't think we were permitted to sell them 860
during that period.

Q. Did you sell them regardless of whether you were permitted or not? A. If we were not permitted we did not sell any.

Q. No, that is not the question.

By the Court:

Q. Do you recall whether you sold grey goods? A. I am not in the merchandising department.

Q. You don't know then? A. I don't know.

By Mr. Hart: 861

Q. Well, you are the credit manager, aren't you? A. That is right.

Q. And part of the profit or part of the income from your corporation came from converting, or dyeing, or finishing? A. Yes.

Q. And it was the custom at that particular time, was it, not, that the goods should be finished and dyed? A. That is right.

862 Q. And there was a reluctance on the part of converters and others in that business to sell white goods, isn't that so? A. I don't know about that.

Q. Well, did you sell any?

Mr. Rudykoff: White goods are finished goods.

A. Do you mean finished goods or grey goods?

The Court: You must make a distinction between finished goods and dyed goods.

863 Mr. Hart: I understood him to say already that he had not sold any grey goods.

The Court: Let us straighten that out here, or you straighten it out, as it would be better.

Q. You have already said that you do not believe you sold any grey goods, is that right? A. That is right.

Q. Did you sell any white goods? A. By "white" I assume you mean the color, and we sold white goods, if that is what you mean.

Q. But that was finished? A. That was finished.

Q. And that adds to your profit or to your cost? A. That is right.

864

By the Court:

Q. Then there are also goods which are dyed? A. That is right.

Q. And you sold those, too? A. That is right.

By Mr. Hart:

Q. And, naturally, that increases your remuneration, isn't that right? A. Yes, sir.

Q. Was the permissible price on dyed goods higher than it was on natural-colored goods, or grey goods? A. Yes, it was. 865

Q. And was it higher than it was on white goods? A. Well, probably the finishers charge more than that, for the colors than they do for plain white.

Q. And were they permitted to charge more to the consumer or the purchaser? A. The dyers, you mean?

Q. For the dyed goods. A. Was who permitted to charge more, the converter?

Q. Yes, the converter. A. Yes, if the charges were higher than for white they were permitted to charge more. 866

Q. And there was a higher net price for dyed goods, isn't that right? A. Yes.

Q. And was that to some extent chargeable to the shortage of undyed goods? A. I don't understand your question.

Q. The price for goods which were not dyed was lower than the prices for goods that were dyed? A. Yes.

Q. And the profit in handling white goods was less than that in handling dyed goods? A. Yes.

Q. White goods are bleached, aren't they? A. They may have to be dyed to grey goods, or grey goods, and if a color is specified such as white, they would have to go 867 through a process to make them really white.

Q. That is not a dyeing process; that is a bleaching process, isn't that right? A. I don't know about that.

By the Court:

Q. When you speak of grey goods, you do not use the word as color grey? A. No.

Q. How do you spell the word grey as applied to goods that come from the mill before being processed? A. G-r-i-e-g-e.

868 Q. So the grey simply refers to the condition and not the color of the merchandise? A. That is right.

By Mr. Hart:

Q. I take it, roughly speaking, that grey goods means unfinished goods? A. That is right.

Q. Now, you say that originally there was a guarantee from the Len Sportswear Company guaranteeing the account? A. That is right.

Q. Was Len Sportswear Company a customer of yours? A. That is right.

869 Q. What was the credit rating of Len Sportswear Company? A. They had a satisfactory rating.

Q. What was their rating? A. They are rated now D2 by Dun & Bradstreet.

Q. And what was their rating at that time? A. E2-½.

Q. And had they been a customer of yours? A. Yes.

Q. Had they bought extensively from you? A. Not up to that point, but they had bought from us, though.

Q. At that particular point did you know Len Forkish? A. Yes.

Q. You knew him personally, did you not? A. Yes, I

870 knew him

Q. Did he come there in connection with these transactions after his guarantee was signed? A. What do you mean "in connection with these transactions after his guarantee was signed"?

Q. Did he come in and discuss the transactions with you? A. There was nothing to discuss after the guarantee was in effect.

Q. Whether or not it was discussed, he did come in? A. He was in the store, yes.

Q. And did he come in and discuss these transactions? 871
A. Not that I recall.

Q. Will you say that he did not? A. I don't recall whether he did or not, but I know he comes in the store quite frequently.

Q. And you are very friendly with him, aren't you? A. I know him quite well.

Q. Socially? A. No.

Q. Didn't Forkish at least come in and ask you whether or not the Daisart were paying their bills? A. Well, at the termination he came in relative to the guarantee, and he probably did, yes. 872

Q. Mr. Witness, did he come in during the course of these negotiations and ask you whether or not the bills were being paid by Daisart? A. Offhand I don't recall, but the probability is that he did.

Mr. Hart: All right. That is all.

Mr. Rudykoff: That is all, Mr. Ackerman.

The Foreman: Could I ask something?

The Court: Just a minute, please.

The Foreman: Your Honor, will you ask the witness to explain something on Exhibit 53, as the ledger sheet is billed to Daisart Sportswear with a Montclair, New Jersey, address, and they are supposed to be in Newark. 873

By the Court:

Q. Where were the bills sent to Daisart? A. To Newark.

Q. To Newark? A. Yes.

Mr. Hart: May we have Exhibit 53?

The Court: Just a moment.

874 Q. Do you know why on Exhibit 53 the ledger account of Daisart has an address at Montclair, if it does have such an address? A. May I see it?

Q. 53, the ledger sheet. A. That was evidently the first address that was given to us by Daisart, otherwise that address would not have been indicated.

By Mr. Hart:

Q. Or was that address given to you by Forkish? A. No, it was not given to us by Forkish.

875 Q. Did you get that address? A. We must have got the address.

Q. Do you know of your own knowledge where that address came from? A. I could not say definitely.

By the Court:

Q. Where are the others located? That is, where is Len Sportswear located? Are they located in Montclair? A. No, sir.

Q. Located at 1133 Broadway? A. That is right.

By Mr. Hart:

876 Q. Where are Daisart located? A. In Newark.

The Court: New Jersey?

The Witness: Newark, New Jersey.

Q. At any rate, at the time of the opening of the account that was the address given by whoever opened the account? A. That is right.

Q. Was Forkish there when the account was opened?

A. When you say "opened", what do you mean by "opened"? 877

Q. Well, you are the credit man. What does opening an account mean?

The Court: Credit manager?

The Witness: Yes.

Q. Or negotiated for. A. I don't recall that.

Q. I am looking at Exhibit 64. Did you have any discussion with either Forkish or Mr. Smith as to what these goods were for? A. I believe I discussed it at times with both of them, and they had told me. 878

Q. And did you know what Smith was manufacturing? A. Of the goods that he brought us?

Q. Do you know that he was manufacturing generally? A. Yes, I knew.

Q. What was he manufacturing? A. Children's wear.

Q. Do you know that he was manufacturing male work clothing? A. Male work clothing?

Q. Yes, Navy garments, coats? A. No, I did not know that.

Q. Well, did you know that—

879

The Court: What did Smith tell you he wanted goods for?

The Witness: As I recall, he mentioned it was for powder bags.

Q. You said something about children's wear before. When the account was opened, he was introduced to you, as you put it before? A. Mr. Smith was brought in by Ben Forkish, and at that time I believe Daisart was—he

880 was doing the contracting work for them or they were doing the contracting for him.

Q. Did you think you were selling these goods to Len Forkish for children's wear? A. We did not sell the goods to Len Forkish for children's wear.

Q. Did you think you were selling the goods for children's wear? A. No.

Mr. Rudykoff: That is objected to.

The Court: As to what he thought is immaterial. It is what he did.

881 Q. Did you know that Smith was manufacturing uniforms or coats for the Navy? A. No.

The Court: He has already said no to that.

Q. You did not know that? A. No.

Q. Did you know that any part of these goods were to go into cloth? A. I did not know. I was not concerned with the end use of the goods.

Q. Did you see Exhibit 64 and the specification on there that it is to be used for male work clothing? A. Yes, I saw that.

882 Q. And did you see it originally at the time that the shipment was made? A. I probably did.

Q. Then with respect to at least that shipment you knew that the goods were to be used for male work clothing? A. Yes.

Q. And you did not know whether it was Navy cloth or what kind of cloth it was, did you? A. No.

The Court: That is the order for 2725 yards.

Mr. Hart: Yes, sir.

Jack Ackerman—for Government—Cross

Q. Did you know Mr. Julian? A. Yes, I know Mr. 883
Julian.

Q. Who is he? A. He is in the employ of A. Steinam Company.

Q. In what capacity? A. He is a merchandise manager.

Mr. Hart: That is all.

Cross-Examination by Mr. Siegel:

Q. Mr. Julian is the president of A. Steinam Company? A. Yes, he is also vice-president.

Q. And when you mentioned a moment ago in answer to 884
Mr. Hart's questions that Mr. Forkish brought Mr. Smith to your place, was he the person who introduced the accountant to your organization? A. He was.

Q. And was he acting in the capacity of a broker? A. No, sir.

Q. Or a ~~finder for~~ materials? A. No, sir.

Q. Was this purely a friendly act on his part? A. That is the way I understood it.

Q. Was there any discussion about it at the time when the account was opened?

Mr. Rudykoff: That is objected to as immaterial. 885

The Court: I do not see its relevancy, counselor, but I will allow this one question and then I will have to limit you.

Q. Was there any discussion at that time? A. Well, my discussions with Len Forkish were such that he had a relationship with Daisart in the fact that Daisart was doing the contracting work for him, and that was the discussion I had with him.

Jack Ackerman—for Government—Cross
Henry R. Harriman—for Government—Direct

886 Q. Did you ship any of this material to Mr. Forkish? A. I don't think so, no.

Q. You don't know definitely? A. I don't know. I would have to look at the invoices.

Mr. Siegel: That is all.

Further Cross Examination by Mr. Hart:

Q. Did Mr. Julian act as a finder's agent on occasions? A. Oh, no, he is in our employ.

887 Q. Do you know whether or not of your own knowledge Mr. Julian collected commissions for acting as a finder's agent, not necessarily in connection with these transactions? A. I do not.

Q. You don't know? A. No, I don't know.

Q. Do you know Mr. Eisenberg of Steinam & Company? A. No, I don't.

Mr. Hart: That is all.

Mr. Rudykoff: Thank you, Mr. Ackerman.

(Witness excused.)

838

Mr. Rudykoff: Mr. Harriman, please.

HENRY R. HARRIMAN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

Q. Mr. Harriman, what is your business? A. Credit manager.

Q. For whom? A. Berkshire Fine Spinning Company.

Q. And what is Fine Goods Sales? A. Well, Fine 889
Goods Sales was the subsidiary of Berkshire, and we no longer use the name. It is known as the Berkshire Fine Spinning Company, the Fine Goods Company.

Q. And did you pass on the credits with relation to Fine Goods? A. Yes.

Q. How long have you been with the mill? A. A little over six years.

Q. And how long have you been in the textile trade? A. Oh, 35 probably.

Q. Do you know the Daisart Sportswear, Inc.? A. I do.

Q. Have some transactions with them? A. Yes. 890

Q. Whom did you see in connection with Daisart on the first occasion? A. Well, I don't think I saw anybody on the first occasion. I think it was done by telephone.

Q. And thereafter did you see someone? A. Yes.

Q. Who was it? A. Mr. Deeb.

Q. Do you see him in court? A. Yes.

Q. Just point to him? A. (Witness indicates.)

The Court: Indicating the defendant Deeb.

Q. At that time did he give you a card? A. (No answer.)

Q. At that time did he give you a card? A. His own 891
card, you mean?

Q. Yes. A. Yes, I think so.

Q. Now, did you have some sort of a record which in connection with your daily affairs you used, and in connection with the business? A. Yes.

Q. I show you a card and ask you whether that is the card that was given to you? A. Yes.

Q. Is that the first occasion when you actually saw Mr. Deeb?

892 Mr. Siegel: May I ask the Court to have it specified approximately when this was?

Mr. Rudykoff: I will.

A. Well, I would not know whether it was the first time I saw him or not, but it was during the transactions.

Q. Very well. Now, do you recall about when it was, or what month? A. May I look at the letter?

Q. You may. A. March, 1945. I don't know whether that is when I received the card or not.

Q. Was it at or about that time? A. I would think so,
893 yes.

Q. Did you have possession of that card until you turned it over to me? A. Yes, sir, I did.

Mr. Rudykoff: I offer it in evidence.

Mr. Siegel: No objection.

The Court: It is received in evidence.

(Marked Government's Exhibit 66-A.)

Q. Do you recall what talk you had with Mr. Deeb? First tell us the subject matter of the talk. What did you talk
894 about?

Mr. Siegel: When was this talk?

The Court: The time has been sufficiently fixed, counsellor.

Mr. Siegel: When?

Mr. Hart: March.

The Witness: What was the question?

Q. What did you talk to Deeb about? A. Well, I think the only way to answer that is probably to start from the

beginning when he was there, and when I first received the 895
order I got in touch with Mr. Smith of Paisart.

Q. Did you ever see Mr. Smith? A. No, I did not. I called him on the telephone and asked him how he expected to pay for this particular contract.

He said he would pay cash for it.

So I asked him for a deposit, which he sent, and later on when additional orders were sent in we asked him for a second deposit, and I think after that Mr. Deeb came in and told us when we had any merchandise ready for delivery to call him on the telephone and he would see that we got our money immediately. 896

Q. And thereafter did you see Deeb? A. Oh, yes, I saw Mr. Deeb often.

Q. And on those occasions did he do anything? Did he deliver anything, if you recall? A. What do you mean? The only thing he would deliver to me was the checks. I don't recall whether he sent them to me, or whether it came direct from him. What I mean is I don't know whether he mailed them in, or whether he brought them in. I think he brought some of them in.

Q. And did this happen from time to time? A. Yes, until the end of the contract. 897

Q. Now, did you have talks with him from time to time about the deliveries? A. Well, he wouldn't see me on deliveries, ~~because~~ that would be out of my department.

Mr. Siegel: I object to that and move that the answer be stricken out as not responsive.

The Court: Motion denied.

Q. Do you recall the number of yards involved in this first order? A. No, but you have a copy of it there which would tell.

898 Q. I show you Government's Exhibit 67 for identification and ask you if the documents relate to an order dated March 21, 1945? A. Yes. What is that, 1,050,000 yards?

The Court: How many?

Mr. Rudykoff: 1,050,000 yards.

The Witness: 1,050,000 yards.

Q. Have you examined the documents attached to it? A. Those are the invoices we sent to cover that.

Q. And do they relate to that order? A. Yes, they do.

899 Mr. Rudykoff: I offer 67 for identification in evidence. (Handing to Mr. Hart.)

Q. Will you please examine 68 for identification and tell us whether the documents relate to an order dated June 8, 1944? A. Yes, they do, 200,000 yards.

Q. And 65 for identification? A. Yes; those are copies of our ledger sheets with all the charges on it.

Q. And do they contain, that is, does 65 for identification contain all of the charges and all of the credits? A. All of the charges and all of the credits, yes.

900 Q. Relating to transactions had with Daisart Sportswear? A. That is right, yes.

Q. Did you also keep a record of your transactions relating to credits? A. Well, we had a credit file. There was not much in it except there were notes I made when the order was originally taken.

Q. Now, as to this 68 for identification, is that a memorandum made under your direction? A. Yes, I made the memorandum.

Q. And did you dictate it at the time that the transactions took place, or shortly thereafter? A. This was this was dictated about the time we received the first order, I should imagine. 901

Q. Did you examine it after it was transcribed? A. I probably did, yes.

Q. And does it set forth accurately what took place? A. I think so.

Mr. Rudykoff: I offer 66 for identification in evidence also (handing to Mr. Hart).

902

Q. Mr. Harriman, there are certain writings handwritten on the memorandum or letterhead dated March 27, 1945. Do you know whether those were present at the time it was received by your firm? A. No. You see, I wouldn't— This is prior to that, isn't it?

Q. That is the order of Daisart. A. Yes, but I wouldn't see this, of course.

Q. I see. A. We made out our own orders, and that would be in the order department.

Mr. Rudykoff: Well, I will concede that these writings were put on after the letter was received. I offer 67 for identification in evidence. 903

(Government's Exhibit 67 for identification received in evidence.)

Mr. Rudykoff: 67 in evidence, if the Court please is an order relating to count 22 for 1,050,000 yards. May I read that at this time?

The Court: Yes, sir.

904 (Mr. Rudykoff read Government's Exhibit 67 in evidence to the Court and jury.)

Q. The total number of yards involved in Government's Exhibit 67 is 1,050,000, is that correct? A. Right.

Mr. Rudykoff: I offer 66 for identification in evidence. I understand there is an objection.

Mr. Hart: I object to it on the grounds that it is apparently an office memorandum by this witness concerning a transaction, and while it may be used for the purpose of refreshing his recollection to

905 have him testify about what happened, certainly a written statement of what happened is not admissible in evidence.

Mr. Rudykoff: I will withdraw that in view of the objection.

Have you examined 68?

Mr. Hart: No objection to 68.

Mr. Rudykoff: I offer 68 for identification.

(Government's Exhibit 68 for identification received in evidence.)

906 Mr. Rudykoff: 68, if the Court pleases, relates to count 31 and is for 200,000 yards.

May I read that at this time?

The Court: Yes, sir.

(Mr. Rudykoff read Government's Exhibit 68 to the Court and jury.)

Mr. Rudykoff: You may inquire.

Henry R. Harriman—for Government—Cross

Cross Examination by Mr. Siegel:

907

Q. Mr. Harriman, when you met Mr. Deeb for the first time he handed you a card, as you testified to? A. Right.

Q. And from the first time or the second time that he handed you the card, it indicated that he was a merchandise broker? A. Right.

Q. And you understood when you spoke to Mr. Deeb that he was acting in that capacity as a merchandise broker? A. Well, I wouldn't say that I knew that he was acting as a merchandise broker. He was acting—

Q. Well, you knew that he was—

908

The Court: Please allow the witness to finish his answer.

A. He was acting in this particular case. I don't know whether he was a merchandise broker for everybody.

Q. I am talking about this particular case. A. A representative I would say of Daisart Sportswear.

The Court: You regarded him as the representative of Daisart Sportswear?

The Witness: Yes.

909

Q. In other words, he handed you a card which showed you that he was a merchandise broker? A. (No answer.)

Q. You understand what a merchandise broker is, don't you? A. Yes.

Q. They are people who go around the market and get the materials for people who are in need of them? A. Yes.

Q. In other words, they have sources of supply for people who require merchandise? A. Right.

910 Q. And that was during the period when merchandise was very scarce to obtain? A. Yes.

Q. And they usually work on some commission arrangement? A. Yes.

Q. Now, when you spoke to Mr. Deeb about the account of Daisart, he referred you to Mr. Smith? A. That is right.

Q. With reference to credit? A. Right.

Q. And then you discussed the matter with Mr. Smith? A. Yes.

Q. And you checked his credit rating? A. That is right.

911 Q. To determine how much credit shall be extended to that firm? A. Yes.

Q. And no credit of any kind was extended to Mr. Deeb? A. No.

Q. And no bills of any kind were rendered to Mr. Deeb? A. No, I don't think so.

Q. The entire transaction was consummated with the Daisart Corporation, isn't that correct? A. That is right, in so far as the charges were concerned.

Q. And the merchandise was shipped to the Daisart Corporation? A. Yes, or where they told us to ship it, I don't know.

912 Q. Wherever they directed you? A. That is right.

Q. But that was not shipped to Mr. Deeb or any place that Mr. Deeb told you? A. Oh, no.

Mr. Siegel: That is all.

Mr. Hart: No questions.

Mr. Rudykoff: May I at this time offer in evidence G5 for identification, which is a ledger account?

The Court: Yes.

Mr. Rudykoff: They have consented to it. 913

(Government's Exhibit 65 for identification received in evidence.)

Mr. Rudykoff: Thank you, Mr. Harriman.

(Witness excused.)

The Court: I think at this time we will declare a ten-minute recess.

(Short recess.) 914

(Government's Exhibits 69 to 73 inclusive marked for identification.)

JOHN J. TACKABERRY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

Q. Mr. Tackaberry, what is your business? A. I am in the textile business. 915

Q. And with what firm are you identified? A. Berkshire Fine Spinning Association, formerly Fine Goods Sales.

Q. And how long have you been in the textile business? A. Over 35 years.

Q. And what is the nature of your duties with the present firm? A. I am manager of the plain goods department.

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916 Q. And was that your capacity during 1944 and 1945? A. Yes, sir.

Q. The plain goods department has reference to what type of goods then? A. Well, plain fabrics that are not printed or especially woven, and a description of the goods would be like plain broadcloths or lawns.

Q. Are those finished goods? A. Finished goods only, yes, sir.

Q. Do you recall some transactions had with a firm by the name of Daisart Sportswear, Inc.? A. I do.

Q. And whom did you see in connection with those
917 transactions? A. Mr. Deeb.

Q. Do you see him in court? A. Yes, sitting there at the end of the counsel table.

Mr. Rudykoff: Indicating the defendant Deeb.

Q. Do you recall your first conversation with him? A. Well, the only thing I remember about the first conversation, Mr. Deeb came to our office and told us that he had priorities for lawns and different fabrics, and that he wanted to buy them.

I think at the first visit we didn't sell him when he
918 was in the office at that time, and then he made several other visits, so subsequently we had goods to offer him and we offered them to him under priority rates, and he purchased the goods and submitted the certification of priority.

Q. Did he say anything with regard to his connection with Daisart Sportswear? A. Well, as I understood it—

Mr. Hart: Oh, I move that that be stricken out "as I understood it."

The Court: Give us your best recollection of what he said. 919

The Witness: Well, the best recollection I know is that the Daisart Sportswear was located in Newark, New Jersey, and that the head of that

Mr. Siegel: I move that this be stricken out.

The Court: No.

Mr. Siegel: It is not responsive.

The Court: The objection is overruled.

Q. Go ahead, Mr. Tackaberry. A. I called Mr. Smith of Daisart Sportswear, New Jersey, in regard to these goods, and I understood—I don't know— 920

Mr. Hart: I move that "I understood" be stricken out as not responsive.

The Court: Yes, it will be stricken out. You were asked to tell us as best you remember what Deeb said to you concerning particularly his relations with Daisart Sportswear.

The Witness: I don't recall that Mr. Deeb went into any details about his capacity in Daisart Sportswear.

921

Q. Do you recall any statement on that score, whether it was in detail or superficial? A. Well, I don't see how I can answer that. I took it for granted—

Mr. Siegel: I object to that and move to strike out what he took for granted.

By the Court:

Q. You took some relationship for granted, did you? A. Yes, sir.

922 Q. All right, tell us the basis of your taking that relationship for granted.

Mr. Hart: I object to the form of the question.

Q. What did you form that opinion on? Was it something that Deeb said? A. Well, yes. He was the only person from—

Mr. Siegel: I object to the answer and move that it be stricken out.

The Court: Objection overruled. Motion denied.

923 A. He was the only person that I had ever seen from Daisart Sportswear, and I formed in my own mind that he was a part of Daisart Sportswear.

Mr. Siegel: I object to that and move that it be stricken out.

The Court: It will be stricken out.

Q. What you formed in your own mind of your negotiations with Daisart's purchases were connected with Deeb and no one else? A. That is right, yes, your Honor.

924 Q. Now, at any time during those negotiations did he tell you in what capacity he represented Daisart, or that he did not represent Daisart? A. No, he didn't.

The Court: All right.

By Mr. Rudykoff:

Q. With regard to these priorities, do you recall what kind they were? A. Well, I can recall they were very

high priorities. I believe or feel sure they were AA-1 925
priorities.

Q. I direct your attention to Government's Exhibits 67 and 68. A. I beg your pardon.

Q. Do those exhibits refresh your recollection as to what priorities were involved? A. This one here is AA-1 priority. They are both AA-1.

Q. With regard to the priorities or the order of priorities, how did AA-1 rate? A. At that particular time this was the highest rating priority.

Q. For piecegoods? A. Textiles, yes.

Q. Being the highest priority rating, what was done 926
as far as your concern was involved? A. Well, being that they were the highest rating priorities, it was necessary to accept business on these ratings, and to give the quickest delivery of merchandise, and we had to conform with the priority. In other words, if somebody had a lesser rated priority, AA-2, AA-X, AA-3 and so forth, this would supersede that, and we had to arrange for production and get quicker delivery.

Q. And was that done in connection with these orders? A. Yes, sir.

Q. And the orders involved what kind of materials? 927

Mr. Hart: I object to that, if the Court please. The orders are in evidence and they speak for themselves. I believe they have already been testified to.

The Court: I do not see how that will do any harm. The objection is overruled.

The Witness: Will you repeat that question?

Q. What kind of materials were involved? A. Well, we technically call them nainsook or batiste. They are commonly known as lawns in the trade.

928 *By the Court:*

Q. What are lawns? What is the texture of the material? A. Well, it is a smooth texture of material.

By Mr. Rudykoff:

Q. What is it commonly used for? A. Something that you make into your plain handkerchiefs that you have in your pocket.

By the Court:

929 Q. Eventually light-woven weight material? A. That is right.

Q. Used for handkerchiefs and the like as you described it? A. That is right, yes.

By Mr. Rudykoff:

Q. Do you know what kind of material that is? A. Well, I am looking at it here, if you don't mind.

Q. You may. A. 76-72, and then this other one over here is 96 and 100 construction.

Q. 76 is that? A. Yes.

930 Q. And is that a very strong material? A. Well, it would depend. It is comparatively strong. I try to qualify that by telling you it would take 9 yards of these particular goods to make a pound.

Q. I see. A. Whereas in this other material here, which is comparatively a stronger material, it would take approximately 7 yards to make a pound.

Q. The higher the count the lesser material it requires to make a pound, is that correct? A. Not necessarily.

Q. Well, then, I am wrong.

The Court: It depends on how the material is spun? 931

The Witness: It depends upon the weight of the yarns, yes, sir.

Q. Were you familiar with the division factors? A. I was, yes, although I had very little to do with it.

Q. Very well. What is a batiste? A. Well, that term "batiste", that is a cloth that is taken in giving a bath to what we term mercerized goods, put through a caustic finish and to give it a sheen on the yarn.

Q. And is that kind of goods shown as finished goods? 932
A. Well, that is one of the processes of finished material.

Mr. Rudykoff: You may inquire.

Cross Examination by Mr. Hart:

Q. Is lawn an ideal material for screening? A. Would you repeat that, please?

Q. Is lawn an ideal material to be used for screening purposes? A. For screening?

Q. Yes. I don't mean screening as far as windows are concerned, but I mean for sifting or screening purposes. 933
A. It is also used for that, yes, sir.

Cross Examination by Mr. Siegel:

Q. Mr. Tackaberry, do you recall about the first time when you met Mr. Deeb in connection with these transactions? A. Yes.

Q. When was it? A. When was it?

Q. Yes. A. I don't remember the exact date. I think that it would be around the—about the spring of 1945.

934 Q. Around March, 1945? A. Yes.

Q. And you mentioned a moment ago that you had a talk with Mr. Deeb about some material? A. Yes.

Q. And Mr. Deeb told you that there were priorities for these materials? A. That is right.

Q. You knew at that time that Mr. Deeb was what we call a merchandise broker? A. I am afraid I was. I assume he was, because somebody like that, acting like he was at that time, I thought he was.

Q. A merchandise broker? A. Yes.

Q. And you knew at that time? A. May I correct myself?

935

The Court: Do not be afraid of any objection. You give your best answer that you can to the questions asked.

The Witness: Well, if your Honor will permit me I would like to explain that in our business we have what we call grey goods, and brokers, and those people buy goods in the open market from several different houses, many houses, as a matter of fact, but when somebody comes in and say they represent or they want to buy for a certain firm, you just take it for granted that they represent that firm, or that they are part of that firm.

936

Q. Now, Mr. Tackaberry, you know that a broker is commonly referred to as a representative who must represent somebody to act in the capacity of a broker?

The Court: You asked him the question and let him answer.

A. A broker in our line—

Q. No. I am talking about 937

The Court: Please, counsellor. Let him answer the question.

A. A broker in our line is more or less of a free agent.

Q. But you understand, Mr. Tackaberry, and I don't want to quibble with you about words, but you understand that a broker is naturally a representative? A. Yes, sir, I do.

Q. You know there are real estate brokers, and you know there are merchandise brokers, and the function 938
of a broker is to bring the buyer and the seller together, so that a sale could be consummated? A. I do.

Q. And in that way moneys are earned by brokers? A. That is right.

Q. I mean you understand that? A. Yes.

Q. And when Mr. Deeb came in and he said or spoke to you about getting materials, he spoke to you about getting materials for the Daisart Corporation? A. That is right.

Q. And you were not familiar with the Daisart Corporation from the standpoint of whether their credit was 939
good, or whether you wanted to do business with them? A. Never heard of them.

Q. And before any account would be opened with any new firm that you had not done business with, the matter would be referred to your credit department? A. That is true.

Q. And Mr. Harriman, who just testified a few minutes ago, was the man in charge of the credit department of your firm? A. That is true.

Q. And after you discussed the matter with any prospective buyer or broker, or some buyer, the matter would go into the credit department for further discus-

940 sion as to whether the account would be opened or not? A. (Witness nods his head.)

Q. You nod your head to indicate yes?

The Court: You are testifying, counsellor, instead of allowing the witness.

Mr. Siegel: Mr. Hart just said he nodded his head.

The Court: He made an observation.

Mr. Siegel: That is right.

The Court: Try to ask questions instead of testifying.

941 Mr. Siegel: This is cross examination, Judge.

The Court: I will allow you considerable latitude.

Q. Now, after you discussed the matter with Mr. Deeb about obtaining this merchandise for the Daisart as against these priorities, did you take Mr. Deeb into the credit department to meet Mr. Harriman? A. I don't recall that I did.

Q. Do you recall being present at any time with Mr. Harriman when discussions took place about the credit arrangements for this account? A. No, I don't think so.

942 Q. Did you refer Mr. Deeb to Mr. Harriman? A. Yes, sir.

Q. And then Mr. Harriman discussed the matter with you subsequently? A. Well, I know that he checked through the order.

Q. And do you know that the merchandise was ultimately delivered? A. Yes, sir.

Q. To the Daisart Corporation? A. Right.

Q. You made mention a moment ago on direct examination that after you spoke to Mr. Deeb you then phoned Mr. Smith? A. That is right.

Q. And did you talk to Mr. Smith about the priorities? 943
A. Yes. I told Mr. Smith that Mr. Deeb had been in to see us and he wanted certain merchandise for which he had priorities for, and I had been looking it up, and then there was a call from Mr. Smith and Mr. Smith told me Mr. Deeb would call on me about purchasing the goods which he subsequently did.

Q. You knew at the time you were talking to Mr. Deeb about those priorities that Mr. Deeb did not have the priorities personally? A. Well, Daisart Sportswear had them.

Q. Yes, Daisart Sportswear Corporation had these pri- 944
orities? A. That is right.

Q. And no account was ever opened for Mr. Deeb personally? A. No.

Q. And no credit was ever extended to Mr. Deeb personally? A. No.

Q. And all of your main dealings afterwards were with the Daisart Corporation, except that Mr. Deeb may have come in and found how the goods were getting on? A. Mr. Deeb came in and always bought the goods from us.

Q. But when Mr. Deeb came in—you say bought the goods, you mean as representative or broker who consummated these orders for the Daisart Corporation? 945

Mr. Rudykoff: That is something that is for the triers of the fact to conclude. That is argument, I submit.

Mr. Siegel: I tried to elicit what his understanding was.

By the Court:

Q. Well, when he came in to place the orders, you understood they were not for him? A. Oh, definitely, definitely not for him.

946 Q. Did you ask him what authority he had to place the orders for Daisart at any time? A. I did not, no, sir.

Q. Did he tell you what authority he had to place orders for Daisart at any time? A. No, he did not.

Q. Did you deal with anybody from Daisart at any time? A. No, the only connection I ever had with anybody from Daisart was a phone call from Mr. Smith, and Mr. Smith or Mr. Deeb visited me after that.

The Court: All right.

Mr. Siegel: That is all.

947 *Redirect Examination by Mr. Rudykoff:*

Q. Now, Mr. Tackaberry, you described screening. What is meant by screening? A. Well, I tried to find out from counsel exactly what he meant by that.

Q. What do you mean by that? A. I would say it was used for industrial purposes for screening some powder bags, or many other uses.

Q. And when you refer to powder bags, what do you have reference to? A. I have reference to bags they pour powder in, gunpowder.

948 Q. And then you make it to sift through, is that it? A. No, not necessarily. In the use of gunpowder the powder was retained in bags and exploded as a unit.

Q. Exploded? A. Yes.

Q. You are speaking now in terms of powder, is that right? A. Yes.

Q. Is that what you mean by screening? A. I don't necessarily mean that by screening. I would say screening would be something that you would sift something through, or that you use in industrial purposes for an opening and so forth and so on.

Q. Was there any talk about powder fifteen bags? A. Yes. 949

Q. With whom did you have this talk? A. Right on the priority.

Q. With whom did you have this talk? A. About these goods?

Q. About powder bags. A. Deeb.

Q. What did he say? A. I did not have any talk with Mr. Deeb about powder bags. Mr. Deeb told me that he had priorities to buy these goods.

Q. Perhaps I misunderstood you, Mr. Tackaberry. Will you listen to my question? Did you have a talk with some- 950 one about powder bags? A. No, sir.

Mr. Rudykoff: That is all.

The Court: That is all. Thank you, Mr. Tackaberry.

(Witness excused.)

Ernest Biehl, called as a witness on behalf of the Government, being first duly sworn, testified as follows: 951

Direct Examination by Mr. Rudykoff:

Q. What is your business, Mr. Biehl? A. I am in the textile business.

Q. With what firm are you connected? A. Eclipse Fabrics Company, Inc., 1450 Broadway.

Q. What Fabrics? A. Eclipse Fabrics.

Q. Were you at one time identified with Berger & Sherin? A. Yes; I was. Mr. Joseph Berger is the head of Eclipse Fabrics Company, and he also is one of the

952 officers of Berger & Sherin, Inc., and I have assisted him in various businesses.

Q. Well, you were identified with the firm of Berger & Sherin, is that correct? A. That is right.

Q. In what capacity? A. I assisted Mr. Berger.

Q. And did Berger & Sherin have some transactions with Daisart Sportswear? A. They did.

Q. What kind of materials did Berger & Sherin deal in? A. Deal in, did you say?

Q. What kind of materials did they deal in? A. Rayons, satins, principally acetate rayons.

953 Q. Satins and rayons? A. Yes.

Q. What are rayons made from? A. Well, rayon is the yarn.

Q. Is it an artificial yarn? A. Yes, it is an artificial yarn, yes, sir.

Q. Made chemically, is that correct? A. It is chemically produced.

Q. As distinguished from a natural cotton fiber? A. That is right.

Q. Or a natural wool fiber? A. That is right.

Q. Or silk, or any other animal fiber? A. Yes, sir.

Q. Now, I direct your attention to Government's Ex-
954 hibit 71 for identification, and ask you whether the exhibits relate to an order from Daisart dated April 23, 1945? A. It does.

Q. Would you please look at the exhibits and examine them and see if all the documents relate to that order? A. Yes, sir, it does.

Mr. Rudykoff: I offer these in evidence, Exhibit 71 for identification (handing to Mr. Hart).

Q. Would you please examine 72 for identification and tell us whether the documents relate to an order from Daisart dated May 1, 1945? A. They do. 955

Q. Will you please examine 73 for identification and tell us whether they relate to an order of Daisart dated June 11, 1945? A. (No answer.)

Q. Have you examined them? A. Yes, they appear to be from another contract, and a number of them shows it.

Q. You have separated them? A. That is right.

Q. Exhibit 73 as it is set up now contains the documents relating to an order dated June 11, 1945, received from Daisart, is that correct? A. That is correct, sir. 956

Q. All right.

The Court: All of these documents are from your office files and, I take it kept in the regular course of your business?

The Witness: That is correct, sir.

Mr. Rudykoff: I offer in evidence 72 for identification as well as 71 for identification.

Mr. Siegel: I object to them on behalf of the defendant Deeb unless they are connected.

The Court: You have a right to make a motion at the proper time if they are not connected. 957

(Government's Exhibits 71 and 72 for identification received in evidence.)

Mr. Rudykoff: 72, if the Court please, relates to count 26 and involves 100,000 yards.

May I read from it?

The Court: Yes, sir. Of satin rayon?

958 Mr. Rudykoff: Yes, sir, rayon satin.

(Mr. Rudykoff read Government's Exhibit 72 in evidence to the Court and Jury.)

Mr. Rudykoff: 71 in evidence, if the Court please, relates to count 25 and is an order for 200,000 yards of rayon satin.

The Court: When is the order dated?

Mr. Rudykoff: April 23, 1945, which I will read with the Court's permission.

The Court: Yes.

959

(Mr. Rudykoff read Government's Exhibit 71 in evidence to the Court and jury.)

Mr. Rudykoff: Will you mark these separately, please?

(Marked Government's Exhibits 74 to 81 inclusive for identification.)

Q. Mr. Biehl, I show you Government's Exhibit 80 for identification. Is that an order received from Daisart,

960 dated July 17, 1945? A. It is.

Q. Now, is 81 for identification related to that order? A. It is.

Q. Are these documents kept in the regular course of business of Berger & Sherin? A. They are, sir.

Mr. Rudykoff: I offer 80 and 81 for identification in evidence (handing to Mr. Hart).

Mr. Rudykoff: I offer in evidence 73 for identification.

Mr. Siegel: Same objection on behalf of the defendant Deeb. 961

The Court: You offer it in evidence now?

Mr. Rudykoff: Yes, your Honor.

The Court: It is received.

Mr. Siegel: Same objection for the defendant Deeb.

The Court: Same ruling.

(Government's Exhibit 73 for identification received in evidence.)

Mr. Rudykoff: 73 in evidence, if the Court please, relates to count 32. It is dated June 11, 1945, and is for 200,000 yards of rayon lining finished. 962

With the Court's permission I shall read the order.

The Court: Yes.

(Mr. Rudykoff read Government's Exhibit 73 in evidence to the Court and jury.)

Q. Mr. Biehl, the numbers with reference to the standard color chart, do they indicate a particular color? A. They do. 963

Q. And is that by reference to a standard chart used in the trade? A. It is.

Q. And does each different number represent a different color? A. That is right.

The Court: A different color, a different shade of color?

The Witness: That is hard to define. That is what the dyers use.

The Court: Yes.

964 Mr. Rudykoff: I offer 80 for identification, as well as 81 for identification.

Mr. Siegel: Objection on behalf of the defendant Deeb.

The Court: Same ruling. Received.

(Government's Exhibits 80 and 81 for identification received in evidence.)

The Court: You can move to strike out the exhibits later if not connected, Mr. Siegel.

965 Mr. Siegel: Yes, sir.

Mr. Rudykoff: 80 in evidence relates, if the Court please, to an order dated July 17, 1945, for 250,000 yards rayon satin, which I will read with the Court's permission.

The Court: Yes.

(Mr. Rudykoff read Government's Exhibit 80 to the Court and jury.)

Q. Did you ever see anyone connected with Daisart Sportswear? A. Well, I met Mr. Smith once only.

966 Q. Where did you meet him? A. In Newark at the Robert Treat Hotel for lunch.

Q. Do you see Mr. Smith in court? A. I believe he is one of the gentlemen there.

Q. Will you point to him? A. I believe he is the second man from the left.

The Court: Indicating the defendant.

Mr. Rudykoff: Indicating the defendant George Smith.

Q. And you say you met him at the Robert Treat Hotel? 967
A. Yes, sir.

Q. Where is that? A. In Newark, New Jersey.

Q. Did you have a talk with him? A. Yes, we did.

Q. What did you talk about? A. Talked about getting additional orders.

Q. What did you say and what did he say? A. Well, as I recall, I read an article in one of the papers, one of the trade papers, that the Government agency controlling these priorities was contemplating changing these, or discontinuing them, and I asked him how could we get any additional business, as we were very anxious to 968
get this type of business.

Mr. Siegel: I did not get his answer. He was anxious to do what?

Mr. Rudykoff: He said—

The Witness: Our firm was anxious to get this priority business.

Q. Priority business? A. That is right.

Q. And did there come a time when you sent the original of Exhibit 70 for identification to Daisart? A. Yes, we sent this. 969

Mr. Rudykoff: I offer 70 for identification in evidence.

Mr. Siegel: Same objection for the defendant Deeb.

The Court: Same ruling, subject to Your right to move to strike it out.

(Government's Exhibit 70 for identification received in evidence.)

970 Mr. Rudykoff: May I read that, your Honor?

The Court: Yes.

(Mr. Rudykoff read Government's Exhibit 70 in evidence to the Court and jury.)

Q. Were the goods described in the orders which you have seen known as finished goods? A. Known as dyed goods, dyed goods, dyed and finished, yes.

Q. These were what is known as acetate rayon? A. Yes.

971 Q. What is an acetate rayon? A. They are not known as acetate rayon. Acetate rayon is a yarn. They were goods made out of an acetate rayon yarn, out of which you can make practically anything.

Q. And is that a special, chemical process? A. Yes, it is.

Q. And it is ordered by that name in the trade? A. That is correct.

Q. Now, these rayons, what are some of their common uses? A. There are hundreds of uses for rayons.

Q. Are they used in the wearing apparel trade? A. Yes.

972 Q. And ladies' or men's? A. Both.

Q. Both? A. Yes.

Q. For cloth? A. Yes.

Q. And these various colors, black, brown, green, gray, blue, white, gold, by whom are those commonly used? A. Many trades, sir.

Q. For manufacturing? A. That is right.

Q. What? A. Numerous articles.

Q. Such as what? A. Used for dresses, for blouses, for shirts, for linings, for millinery, for ribbons. There are at least 20 or 30 different uses for that.

Q. Did you ever have any talk about powder bags with anyone? A. It is only powder bag filters on [illegible]? 973

Q. Yes.

Q. Did you ever speak to Smith about that? A. Just in a general way. I was informed this was a deep secret, so I did not pursue it any further.

Q. Who said that? A. Well, I don't say that was the exact words, but I believe Mr. Smith said it.

Q. Did he say that in substance? A. In substance, yes.

Cross Examination by Mr. Hart:

974

Q. Mr. Biehl,— A. Yes, sir.

Q. —acetate rayon you started to say may be converted into what? A. Well, acetate rayon—

The Court: A yarn.

Mr. Hart: That is right.

Q. Acetate rayon is a yarn, is it not? A. That is right. It is manufactured in the cloth.

Q. So if I say acetate rayon trade that is tautofogical or repetitious, and if I say acetate rayon you understand that we mean the yarn. A. Yes.

975

Q. And that may be converted into how many kinds of material? A. It is hard to answer, perhaps hundreds.

Q. Pardon me. A. Perhaps hundreds.

Q. And satin is not a material; it is a finish? A. No, it is a material.

Q. When you take acetate rayon and convert that into satin, is that a satin, or is that a rayon satin? A. When you have—can I qualify this?

The Court: Are you familiar with—

976 Mr. Hart: May I withdraw the question and put it this way, if the Court please?

The Court: May I?

Mr. Hart: Yes, sir.

By the Court:

Q. Are you familiar with the manufacturing process of rayon? A. I am, sir.

Q. You have been in a rayon factory? A. Yes, sir.

Q. Counsel asked you concerning rayon satin? A. Yes.

977 *By Mr. Hart:*

Q. Is rayon satin a satin? A. It is a satin.

Q. What other types of satin are there? Before rayon existed we had satin, isn't that so? A. There were silk satins.

Q. Yes. What other types?

By the Court:

Q. Does the satin refer to the finish? A. It refers to the weave.

978 Q. To the weave? A. Yes.

Q. After it is woven it is put through a machine and you get the satin finish? A. No, the satin is produced in the weave itself.

By Mr. Hart:

Q. Do they make rayons out of this acetate rayon? A. I would not know.

Q. Well, you have said, I think, there are countless uses 979
to which it may be put. A. That is correct.

Q. Now, you knew at the time you sold this material to Smith that it was represented to be purchased for the purpose of being used for powder bags, is that right? A. That is right.

Q. Based upon your experience, is it a suitable material for powder bags?

Mr. Rudykoff: That is objected to.

A. I could not answer that. 980

The Court: He has answered. He said he could not answer it. He does not know.

Q. Well, can bags be made out of rayon, ordinary bags? A. That is a technical question. I can't answer that.

Q. Why? A. I have not seen bags made.

Q. Pardon me? A. You mean—you can make pillows out of them.

Q. How about hammocks? A. Hammocks? I have not seen hammocks.

Q. Out of rayon? A. I have not seen any, no. 981

The Court: Could this material that you sold Daisart be used practically for hammocks?

The Witness: I would not think so.

Q. Could it be used for powder bags? A. I don't know.

Q. Well, you were selling this material? A. Yes.

Q. Under a priority, that was extended? A. That is right.

Q. And you were an experienced man, is that correct,

982 in the rayon business? A. That is right. I never saw a powder bag filter, so I don't know of what use could be made out of it.

Q. You don't know whether it could or not? A. I don't know, no.

Q. On one of these orders it says "according to sample attached." The samples were your samples, weren't they? A. Could I see which order that is?

Q. Yes. Without my looking through here, do you recall that there were orders which said "According to sample attached"? A. Sample for colors.

983 Q. Yes. A. Yes, certainly.

Q. Now, in your particular business at that time there was a scarcity of material, was there not? A. That is right.

Q. And you were a converter, your concern? A. A manufacturer.

Q. A manufacturer? A. That is right.

Q. What did you manufacture? A. Acetate rayon satins.

Q. And the profit on manufacturing or selling acetate rayon satins which were colored was a little more than if they were not colored, wasn't it? A. Yes.

984 Q. And the custom grew up, did it not, at that particular time for manufacturers, converters and others to try to sell colored material rather than sell it without it being dyed? A. Well, the only way that could be used was if it was colored.

Q. Pardon? A. The only way that could be used was if it was colored.

The Court: Did your company prefer to sell dyed material rather than plain white material?

Mr. Hart: I think he answered the question more comprehensively than that. 985

The Court: All right.

Q. You say it is the only way it could be used, by being colored, is that right? A. Yes.

Q. And the darker colors were more expensive than the lighter colors? A. They are, yes, because it costs more to dye.

Q. And the colors specified here were light colors, were they not? A. All colors. I can't remember those colors.

Q. And if lighter colors were used they were cheaper, isn't that so? A. That is right. 986

Q. And aside from your custom to supply samples of colors, you had available, or you had made available to prospective purchasers certain information, and would you indicate to them what allowance would be granted for certain materials? A. Whatever colors are specified, those goods were dyed to, and orders were filled to the customers' satisfaction.

Q. But you did have samples, did you not, or swatches, or whatever you call it? A. Yes, we had swatches.

Q. And those swatches are used in your business and in other businesses, for the purpose of apprising the customer what the completed product looks like? A. That is right. 987

Q. And did you on occasion give swatches or samples, or pieces, to customers for examination and for specification on their order? A. Yes.

Q. You did not sell any grey goods, did you? A. Not at that time.

Q. Now, do you recall the weight of these goods? A.

988 You mean the definite weight, or do I have in mind what it was approximately?

Q. Yes. A. This is only approximate.

Q. You have in mind the finish on these goods? A. Yes.

Q. Was the finish and the weight of the goods such as they could be used in the manufacture of blouses or dresses, or some of the articles you have mentioned? A. Yes.

Q. Pardon me? A. Yes, sir, they could be used for that.

Q. Do you recall the weight of it and the finish of it? 989 Was the weight such as is ordinarily used in the manufacture of blouses, or women's garments, or was it heavier than that?

The Court: It would depend perhaps upon the garment, wouldn't it, counsellor, when a man asks for certain goods?

Mr. Hart: I specified blouses and dresses.

The Court: He has told you that it could be used for dresses and blouses, is that right?

The Witness: Yes.

990 Q. Would it be practical to use it in blouses and dresses? A. Definitely for blouses and perhaps for cheap dresses.

Q. For cheap dresses? A. Yes.

Q. Isn't the finish always specified hard finish? A. Lawn finish.

Q. Is it hard finish? A. No, lawn finish is not a hard finish.

Q. On this last order that you received from Daisart, what did you do with the material that was left on hand after you sent a letter of cancellation?

Mr. Rudykoff: That is objected to as immaterial. 991

A. I can't answer that question.

The Court: He said he can't answer it.

Q. Well, you did receive, did you not, the full amount of the order placed by Daisart from the mill after sending its order together with the priority to the mill?

Mr. Rudykoff: Same objection.

The Court: We will let him answer that. 992

A. I can't answer that, because I don't know the details, but we did not receive the full amount.

Q. Pardon me? A. We did not receive the—the mill did not receive the full amount.

Q. The mill did not receive the full amount of the yarn? A. That is right.

Q. For the manufacture of these goods? A. That is right.

Q. How much of it did it receive? A. I can't answer that. I don't know.

Q. Well, did you send that letter, or were you present at the time that letter was sent cancelling the several hundred thousand—three hundred and some thousand yards that was still due on that order? A. If I was present. 993

Q. Yes. A. Yes.

Q. You knew it had been cancelled? A. That is right.

Q. And you know that the order had been placed by Smith in July of that year, did you not, in April and July? A. That is right.

994 Q. And you knew that the goods in the ordinary course of events would come through, isn't that so? A. No, they would not come through because the yarn was cancelled. How much of it I don't know.

Q. It was cancelled on September 30th? A. Well—

Q. Prior to that time there had been deliveries made of the acetate yarn, had there not, from the manufacturer to you?

Mr. Rudykoff: I object.

The Court: I don't see the purpose of this, counsellor.

995 Mr. Hart: The purpose of it is to affect the credibility of this witness.

The Court: Ask him specifically then.

Mr. Hart: Pardon?

The Court: Ask him specifically whether he unlawfully diverted any of the merchandise that was manufactured for this order.

Mr. Hart: Judge, if I did that I would be standing here and asking a question which would be asked in such a manner that it would be like the U. S. Attorney being instructed by your Honor to

996 put a defendant on the stand and ask him whether he is guilty or not. You don't do things as naively as that.

The Court: You charge the man with wrongdoing, specific wrongdoing, and you should call his attention to the specific facts that you charge are wrong. Call his attention to that.

Mr. Hart: That is what I am trying to do, if the Court pleases.

The Court: We will permit you some latitude. Go ahead. I do not want to curtail the cross-examination. 997

Mr. Hart: Judge, I think you have already broken the force of my questioning, or any question I am asking. I don't want to ask this witness a direct question, Did you do this, or did you sell that, or did you divert this or divert that, but now—

The Court: I think it should be asked. If you charge this man with any wrongdoing for the purpose of reflecting upon his credibility, you should charge him with it and in no uncertain terms. 998

Mr. Hart: Judge, I am not charging anybody with anything. I am not the United States Attorney's office. I have been out of the U. S. Attorney's office for twenty years, and I am trying to meet a charge against the defendants here.

The Court: We have no question before us now. If you have a question you may submit that question and proceed.

Q. Mr. Witness, do you say you did not receive the full amount of this priority order?

999

Mr. Rudykoff: Objected to.

A. That is right.

Q. From the manufacturer?

Mr. Rudykoff: Objected to.

The Court: Overruled.

A. We did not receive the full amount.

1000 Q. What proportion of it did you receive? A. I can't answer that.

Q. Do you say that you did not sell as free goods part of this merchandise which was obtained by you under Smith's priority or Daisart's priority?

Mr. Rudykoff: That is objected to as immaterial.

The Court: I think that is immaterial. If they are free goods he could sell them to anybody.

Mr. Hart: May the question be read, if the Court please? May the question be read?

1001 The Court: Did you sell—

Mr. Hart: I did not say they were free goods. I said did he sell them as free goods.

Mr. Rudykoff: I say it is immaterial.

The Court: We will permit the answer to that question.

A. I can't answer that question.

Q. You have your records, don't you? A. I have not them with me.

Q. You knew you were coming to court to account for these goods, did you not?

1002 Mr. Rudykoff: No, he did not.

Q. Did you know that Smith was charged with having received 450,000 yards from your concern, having diverted them? A. I was not apprised of any detail.

Q. Would your records show what you received and how you disposed of the balance of it? A. They should.

Q. And you did not bother to look at your records this morning before you came down? A. No.

The Court: Now, did you unlawfully divert any of the material that was manufactured on Daisart's orders and sell them in violation of any regulation? 1003

Mr. Hart: If the Court pleases, just a minute. I object to that question on the ground that is a question for the jury to determine and not the witness, and I do not think the witness should be permitted to determine the question.

The Court: The objection is overruled.

You may answer.

The Witness: I can't answer that, your Honor.

1004

Redirect Examination by Mr. Rudykoff:

Q. Now, Mr. Biehl, did you receive a subpoena? A. I did, sir.

Q. Did you receive one from the Government? A. I did.

Q. Have you received any subpoena from the defendant? A. I did not.

Q. And did you ever see Mr. Hart before this day? A. No, I did not.

Q. Were you ever apprised that he wanted anything? A. I was not.

Q. And do you know now what he wants? 1005

Mr. Hart: If the Court pleases, the jury know what I want I think, and whether he knows or not—

The Court: I will sustain the objection.

Mr. Rudykoff: That is all.

Recross Examination by Mr. Hart:

Q. You saw Mr. Rudykoff before today, didn't you? A. Yes, sir.

1006 Q. How many times? A. Once.

Q. And he never told you what the defendants were charged with? A. He did not.

Mr. Hart: That is all.

Mr. Rudykoff: Thank you.

(Witness excused.)

JOSEPH C. CARLIN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

1007

Direct Examination by Mr. Rudykoff:

Q. Mr. Carlin, what is your business? A. I am a credit man for a factoring concern.

Q. What factoring concern? A. United Factors Corporation.

Q. Did that concern factor Berger & Sherin? A. We did.

Q. And at some time was an inquiry made with regard to the credit of Daisart Sportswear? A. Yes, sir, it was.

1008 Q. And in connection with that inquiry did you go to the place of business of Daisart Sportswear? A. Yes, I visited them.

Q. And whom did you see there? A. Mr. Smith.

Q. Do you see Mr. Smith? A. I believe the second man is Mr. Smith (indicating).

Mr. Rudykoff: Indicating the defendant George Smith.

Q. Did you have a talk with him? A. Yes, I did.

Q. About when? A. Well, it was probably three years ago. I am not certain of the date. 1009

Q. Who was present at the time? A. Just Mr. Smith and myself.

Q. Now, was that in a plant or an office? A. Well, he had a small office there, but we walked through the plant also.

Q. What kind of a plant was it? A. It was a manufacturing plant with cutting tables and I believe sewing machines, too.

Q. Were people working there? A. A few people.

Q. What were they making? A. They were making children's overalls and that type of garment. 1010

Q. Did you have some talk about powder bags? A. Yes, Mr. Smith told me that he was operating on priorities which covered contracts he had received from the Aluminum Company to make powder bags.

Q. Did you see any powder bags? A. No, I did not.

Q. Did you ask to be shown? A. I asked to see them, and there were not any available at that moment.

Q. Did you have some talk about credit? A. Yes, I primarily went out to establish the credit of the concern but could not arrange it.

Q. And did you thereafter pass on the credit? A. On a cash-before-delivery basis, yes. 1011

Mr. Rudykoff: You may inquire.

Cross Examination by Mr. Hart:

Q. These children's overalls that you saw, did you see the packages there of overalls? A. No, I did not. They were on the tables.

1012 Q. Did you see the labels bearing UNRA, showing that these were part of the Lend Lease program? A. I have no recollection of it.

Q. Did you have a discussion with Smith about that, or don't you recall? A. Well, we discussed what was being made in that plant as we walked through and I don't recall anything about UNRA.

Q. Or Lend Lease? A. No, no recollection.

Q. You were in the cutting room and shop room on the floor above the street? A. I think he had two floors, as I recall, above the street.

1013 Q. Yes. A. The second and third possibly.

Q. Which floor were you on? A. Two floors.

Q. Did you see approximately 70 machines up on the second floor? A. I saw some machines. I wouldn't know how many.

Q. And did you see operators working at those machines on the second floor? When I say the second floor I mean— A. There were very few operators, as I recall. There might have been five or six women in the plant.

Q. And what time of the day were you there? A. In the morning.

1014 Mr. Hart: That is all.

Mr. Rudykoff: That is all. Thank you.

(Witness excused.)

The Court: Next witness.

WILLIAM T. BURGIN, called as a witness on behalf of the Government, being first duly sworn, testified as follows: 1015

Direct Examination by Mr. Rudgkoff:

Q. Mr. Burgin, what is your business? A. Textiles.

Q. With what firm are you connected? A. Colonial Mills, Inc.

Q. In 1945 with what firm were you connected? A. Southeastern Cotton.

Q. Were you at any time connected with Steinam Company? A. No, sir.

Q. How long have you been in the textile trade? A. About 22 years. 1016

Q. What is your present capacity with the firm that you are connected with? A. I am a merchandise manager.

Q. And are you in charge of piecegoods? A. Piecegoods, mill, one of the mills.

Q. In 1945 or 1944 were you in charge of the sales of piecegoods? A. Yes, sir.

Q. And at that time you were with what firm? A. With Southeastern Cotton.

Q. What are piecegoods? A. Piecegoods are dyed, bleached or printed goods. I mean my particular function 1017 was the sale of finished piecegoods for various mills.

Q. And is there another department of the Southeastern that has to do with grey goods? A. They had other divisions that sold unconverted goods, yes.

Q. Your department was, therefore, concerned only with finished piecegoods, is that right? A. Correct, that is right.

Q. And that is all that you did day in and day out through 1944 and 1945? A. Yes, sir.

1018 Q. During that time did you take a number of orders which carried certain ratings or priorities? A. Practically all orders did.

Q. With regard to the free goods, will you tell us what was meant by free goods? A. That was the small portion of any given quality that was not directed to be set aside under priorities. That was a very small portion, and in practically all cases, but theoretically you would have a few goods left, and you did not have very many of those. You would be liable for 100 per cent of your production.

Q. During 1944 were there very many free goods avail-
1019 able? A. No, sir.

Q. During 1945 was the same condition present? A. Same condition; there was very little.

Q. With relation to priority what was the highest priority which was submitted to you in your department during the year 1945? A. We had AA1.

Q. And during 1944 did you ever receive any priorities higher than AA1? A. No, sir, I never did.

Q. Now, in relation to the next priority entitled to recognition, what was that called? A. AA2X.

Q. So that AA and AA2X were the two highest priorities recognized in the finished piecegoods industry? A. The
192 highest that I knew of.

Q. And while those priorities were in the possession of your firm and other firms in the industry dealing with finished piecegoods, were they legally able to honor any other orders carrying a lower priority? A. At times.

Q. Now, assuming that there was not enough material to cover the AA1 or AA2X priority, was it possible to ship material on a lower priority? A. No.

Q. And that was true during 1944 and 1945, is that correct? A. Yes, that is the condition that prevailed.

Q. Do you know Daisart Sportswear? A. I don't know them. 1021

Q. Do you know anyone connected with the firm? A. No, sir, I do not.

Q. What is meant by poplin? A. Poplin is a term used to describe a cotton fabric, generally a cotton fabric. It has a more or less permanent rib running crosswise.

Q. And does that describe the construction of the material? A. It could be—no, it describes the type not the construction.

Q. I see. A. It is the type of fabric.

Q. And what is that material commonly used for? A. Generally it is used for nurse's uniforms, sometimes for sport dresses, sometimes for shirts and children's wear. 1022

Q. What is meant by Sanforized? A. Taking out the residual shrinkage that remains in there down to one per cent or less.

Q. It is a process? A. A mechanical process, sir.

Q. And what is Sanforized cloth used for as a rule? A. Sanforized is a process so that there would be practically no further shrinkage in washing.

Q. What is the cloth that is Sanforized used for? A. Generally for wearing apparel.

Q. What is meant by a fast dye? A. A dye that is fast, but usually to commercial running, or boiling water, will bleed a little or none. 1023

Q. Is that commonly used for wearing apparel? A. Generally speaking.

Q. Is there a different kind of dyeing process which is not so protected against running? A. Yes, there are other qualities.

Q. And are they commonly used for women's wear or men's wear? A. Not generally.

1024 Q. So that that dye is usually associated with material that is used for the manufacture of some kind of wearing apparel, is that correct? A. In most cases, I believe.

Q. And for industrial purposes it would not be necessary to have a fast dye?

Mr. Hart: I object, if the Court please. This witness has not shown that he is qualified.

The Court: There has been no objection until the present time.

Mr. Hart: I know, but this is a question that I do object to, as to what is used for industrial purposes.

1025 The Court: I sustain the objection at this time. If you desire to qualify the witness in this respect you may do so.

Mr. Rudykoff: Very well.

Q. With regard to the materials in the piecegoods departments, were there materials in that department which were vat-dyed? A. Yes, sir.

Q. And how many yards of such material would you approximate you dealt with during the year 1945? A. 300 million.

1026 Q. And did you handle material that was dyed in some other way? A. Yes.

Q. What type of dye do you have reference to? A. Sulfur or commercial.

Q. Are you using "commercial" in the sense of industrial use? A. No, sir.

Q. Very well. With regard to the commercial, about how many yards would you approximate that you dealt with during 1945? A. Not more than 2 or 3 per cent of the total.

The Court: You have been in the textile business for 22 years? 1027

The Witness: Yes, sir.

Q. And have you dealt with that kind of—

The Court: I think you have sufficiently qualified him.

Mr. Hart: If the Court please, a man who is in the textile business that sells to the ready-to-wear trade, or clothing trade here, is he in the textile business? 1028

The Court: You will have your opportunity to test his competency on cross examination.

Mr. Hart: Before the question is asked, may I not do that?

The Court: No. I think you should do it at the regular time, and then it will be a question of fact for the jury to determine as to what weight to give his testimony.

Mr. Hart: A preliminary examination of it?

The Court: I think that is a matter that lies in the discretion of the Court.

Mr. Hart: It does, your Honor. 1029

The Court: I will receive the testimony now and the jury may pass upon the weight to be given to it at the proper time.

Q. Mr. Burgin, is that dyed material generally used for industrial purposes? A. No.

Q. Now, with relation to cost, which is the more expensive, the vat-dye or the other type of dye that you have described? A. The vat.

1030 Q. What is a cotton bleach material? A. It would be a piece of cotton goods that has been put through a bleaching process.

Q. And is bleaching a finish? A. Yes.

Q. Is that considered in the trade as finished piecegoods? A. Yes.

Q. Are you familiar with rayon taffetas? A. I am.

Q. What is a rayon taffeta? A. Well, a rayon taffeta is a piece of plain woven rayon goods with contrasting features, two different sizes of yarns, so that you get a ribbed effect.

1031 Q. And is a white rayon taffeta a finished piecegoods? A. Yes, sir.

Q. What is the common and usual use of such material? A. It is used for lining and bags, and it is used for ladies' slips to some degree, and it is used for drapery fabrics and upholstery in some cases.

Q. Now, is taffeta before it is bleached or white in a grey state? A. It is called that, yes, sir.

Q. And is there such a thing as a rayon taffeta in a grey? A. In a grey state?

Q. Yes. A. Yes, sir, there is such a thing as that, yes, sir.

1032 Q. And what is a rayon jersey? A. A rayon jersey is a knitted fabric.

Q. And in the white is that considered finished piece goods? A. It is.

Q. Now, what are some of the common uses of rayon jersies in the white? A. In the white?

Q. Yes. A. Well, it could be used for under or outer wear, depending upon its weight.

Q. And what is meant by a rayon fuji? A. A fuji is a

combination rayon cloth made of filament yarn one way and of spun yarn the other. 1033

Q. In the white is that finished piecegoods? A. It is.

Q. Is that an expensive material? A. Moderately.

Q. What is it commonly used for? A. Sportswear.

Q. Red rayon crepe, would that be considered a piece of finished piecegoods? A. It would.

Q. What is crepe, or rayon crepe, I should say? A. Well, rayon crepe is rayon both ways, and in one direction the cross threads are twisted very hard, so that in the finished process when they are wet they will shrink and contract and give the crepe a little heavier effect on the surface of the fabric. 1034

Q. And what is that commonly used for? A. It is used for under and outerwear, both, depending upon weight and quality.

Q. And red rayon crepe, would that be the type of material used in women's wear? A. It could be. It would be.

Q. Is it likely to be used in men's wear? A. I wouldn't think so.

Q. And Navy rayon crepe, what are some of the uses to which material of that kind is commonly put? A. Ladies slips and dresses. 1035

Q. What is meant by dobby prints? A. I don't know I know the terms, but I don't know in what sense they are used.

The Court: Are you going to be much longer on direct examination?

Mr. Rudykoff: About ten minutes.

The Court: I think then we had better adjourn at this time. I thought perhaps you could complete

1036 the direct examination of this witness this morning, and then leave the cross examination until this afternoon. However, we will take a recess at this time.

Please come back at a quarter after two, and I give the jury the usual admonition that I have heretofore given, not to discuss the case amongst yourselves; keep your minds open, free and clear, and if anybody should approach you, report it.

(Recess to 2.15 p. m.)

1037

AFTERNOON SESSION

WILLIAM T. BURGIN, resumed.

Direct Examination by Mr. Rudykoff (Continued):

Q. Mr. Burgin, what is meant by a sateen? A. A sateen is a type of weave.

Q. Does that have any relation to the cloth; does it describe a particular cloth? A. This describes a particular

1038 weave.

Q. Not a particular cloth, is that right? A. No.

Q. Will you tell us what that weave is? A. There are several types, two principally, but it means that the cloth is woven with a considerable portion of the warp or the filling, that is, the length or crosswise threads. It could be either of those threads that could be used.

Q. With relation to finished piece goods, what does 1.32 mean? A. It would mean— In my opinion, it would mean yards per pound.

Q. Is that the way the trade designates the weight of the material as a rule? A. As a rule; in yards per pound. 1039

Q. Yards per pound as to what area? A. Either linear or square.

Q. And is that square yards? A. Not necessarily. It could be either.

Q. Suppose a material was described as being by weight 1.32, that would indicate a weight for what area of cloth? A. Whatever weight that cloth was, it would be yards per pound.

Q. In other words, it would take the length crosswise for that particular cloth, so if it was a 36 inch width cloth it would be one yard, 36 inches across, is that correct? 1040

Mr. Hart: I object to the question. I do not know what the length crosswise is.

The Court: Suppose you make the question clearer as to what you mean.

Mr. Rudykoff: I withdraw the question.

By Mr. Rudykoff:

Q. Assuming that a piece of cloth is 36 inches in width and it was described as being 1.32 weight, what would be the length of that cloth? A. It would be one and thirty-two hundredths yards necessary to weigh one pound. 1041

Q. I see. In other words, the 1.32 in yards, that describes the yards, is that correct, per pound of that particular cloth? A. That is right.

Q. And if that cloth were 39 inches in width, it would be 1.32 yards necessary to make a pound, is that correct? A. No.

Q. Well, I seem to be a little dense about that but

1042 The Court: What does 1.32 mean?

The Witness: Your Honor, may I explain—

The Court: Yes, you explain any way you want to.

The Witness: 1.32 could refer to most any width of cloth, but whatever it referred to, it would take 1.32 yards of that particular type.

The Court: About one and one-third yards—one yard and one foot of that given material weighs a pound?

The Witness: Yes, sir.

1043 *By Mr. Rudykoff:*

Q. And that given material may be 36 inches or 39 inches in width, is that correct? A. Yes.

Q. Depending—

The Court: I think the jury understands. I think it is plain that 1.32 means approximately one and a third yards, that the material weighed irrespective of its width.

The Witness: Yes, sir.

1044 *By Mr. Rudykoff:*

Q. With regard to weight, has that any relation to the weave, the count of the material? A. Weight?

Q. Yes? A. No.

Q. Is there any increase in weight or decrease in weight depending upon the count of the particular material?

Mr. Hart: I think the witness has already answered that. He says that it depends on the yardage.

The Court: I do not think these questions are so vital. I will allow it. The objection is overruled. 1045

By Mr. Rudykoff:

Q. Is that answerable? A. Not in a yes or no.
Q. Answer it in your own way.

The Court: The weave has a certain number of threads per square inch.

The Witness: Yes, sir.

The Court: Some of those threads runs vertical and some run horizontal? 1046

The Witness: Yes, sir.

The Court: Now, those threads, some are finely spun and some are loose, and according to the weight of the threads used in the material, that would determine then the weight of the yard, would it not?

The Witness: The final weight, yes, sir.

By Mr. Rudykoff:

Q. Given the same type of material with an increased count; would the weight go up or down? 1047

The Court: You mean the same type of yarn?

Mr. Rudykoff: Yes, the same type of yarn.

A. The weight would be heavier.

The Court: Because there would be more yarn per square inch?

The Witness: If it were the same weight yarns, yes, sir.

1048 *By Mr. Rudykoff:*

Q. Would the count of the material go up or down? A. It would go up.

Q. With the increase in the number, is that correct?

Q. Now, during 1945 and 1944 price control was in effect, isn't that so? A. It was.

Q. Was there a regulation which related to finished goods? A. There was.

Q. What was that regulation? A. MPR 127.

Q. Did MPR 127 provide for a division factor? A. It

1049 did.

Q. Assuming for your purpose that the division factor which applied during that period was .88, will you tell us in your own words what that meant? A. Yes. You were allowed to take certain cost factors into account. Those factors were the cost of your basic cloth, your freight, your packing, your shrinkage if any, and your dyeing, and those added up and then divided by your division factor gave you your ultimate maximum selling price.

Q. Would that in simple terms mean that the cost was 88% of the selling price? A. Roughly.

Q. And that would provide for approximately a 12%

1050 profit on the selling price, is that right? A. Approximately.

Q. That is on the assumption that the division factor was 88. Assuming that the division factor were higher, instead of being 88, it was 91 or 92, would the permissible profit increase or decrease? A. Decrease.

Q. The higher the division factor, the less profit, is that correct? A. That is correct.

Mr. Rudykoff: You may inquire.

Cross Examination by Mr. Hart:

1051

Q. Mr. Burgin, has the count any relation to the weight?

The Court: Has the what?

Mr. Hart: The count, in relation to the weight.

The Court: You mean the count of the threads per square inch?

Mr. Hart: That is right.

The Witness: Yes.

By Mr. Hart:

1052

Q. Isn't it dependent upon the yarn and the weight of the yarn? A. I don't understand what you mean.

Q. Well, I assume that when you say count you mean the number of threads per square inch, as his Honor has indicated in his question, is that correct? A. Yes.

Q. Now, the word "threads" I assume is synonomous with yarn, is it not? A. That is correct.

Q. And some yarn is heavier than other yarn? A. Yes.

Q. And some yarn is thinner than other yarn? A. Right.

Q. And sometimes the thinner yarn may be heavier—may weigh more than the heavier yarn, isn't that so?

1053

The Court: By "heavier" you mean broader in diameter?

Mr. Hart: Broader in diameter, yes.

A. No.

Q. Does the diameter of the yarn determine the weight? No.

Q. In other words, there may be yarn which has a wider

1054 and greater diameter and weigh less than yarn which has a less diameter? A. That could be.

Q. So the answer as to whether or not the count has anything to do with the weight of a particular piece of goods depends upon various factors, including the diameter, the weight, and other factors, with respect to the yarn used, is that so? A. That is true.

Q. What is sateen used for? A. For many purposes. It is used in upholstery fabric—a great deal in drapery fabric. It is used in clothing to some degree. It is used in linings. There are many uses.

1055 Q. Industrial as well as commercial, is that correct? A. Yes.

Q. And sateen, we can agree, is not a material—it refers more to the finish, is that not so? A. To the type of weave.

Q. Which makes itself apparent in the finish—it gives a smoother finish? A. It does.

Q. Sometimes a shiny finish? A. Sometimes.

Q. Would you mind stepping down and examining a piece of material here?

The Court: What material are you going to have him examine?

1056 Mr. Hart: The curtain, unless I can get some help to bring it over to him.

The Court: What curtain is that? I do not see any need for that. He has told us that it is used for draperies, and I think that is sufficient.

Mr. Hart: I see a reason for it, Judge, otherwise I would not ask him the question.

The Court: If you have a piece of sateen you may use it and show it to him.

Mr. Hart: If I can get some help—

The Court: Do not disturb those draperies, counsel. They belong to the courtroom. 1057

Mr. Hart: Judge, I am not going to ruin them or anything. I just want to get before the jury what sateen looks like.

The Court: You are doing that from something that is not going to be marked in evidence.

Mr. Hart: May it appear that the curtain that we are referring to is not hanging in the courtroom? It is on a bench in the courtroom.

The Court: I suppose that the quickest way would be to bring it over or let him go over and look at it. 1058

(To the Witness): Go over and look at that curtain that is on that bench and tell us whether the the backing on it is sateen. That will save time perhaps.

(Witness leaves stand and examines the curtain referred to in the courtroom.)

Mr. Hart: While you are here, will you look at the outside of it?

(Witness examines curtain.) 1059

The Court: All right, you may return to the stand.

(Witness resumes the stand.)

Mr. Hart: May I hold this up, if the Court please, for the purpose of showing just what it looks like?

The Court: All right, point it out.

(Mr. Hart holds up curtain.)

1060 The Court: Defendants' counsel holds up for examination the particular material.

By Mr. Hart:

Q. Mr. Witness, you have examined the lining of that curtain which has just been exhibited to the jury. A. Yes.

Q. And is that sateen? A. The backing.

Q. The lining? A. Yes.

Q. The part I held up? A. Yes.

Q. Not the lining, the backing? A. Yes.

1061 The Court: The lining is between the backing and—

The Witness: The outside of the backing—the one that hangs back to the wall.

By Mr. Hart:

Q. The cream color shiny substance? A. Yes.

Q. And you have testified as to what various materials are used for, and could that be used for ammunition powder bags? A. I don't know.

1062 Q. If I told you it was ordered for powder bags by a metal company, you would say that their knowledge is superior to yours?

Mr. Rudykoff: That is objected to.

The Court: That is based on facts that are not in evidence.

Mr. Hart: Is it conceded without reading the record that cotton sateen was the material specified by the Metals Disintegrating Company?

Mr. Rudykoff: The records show, so far as I recall, 1063
that there was a 1.32 sateen ordered on one occasion and that that was the intended specification with regard to the ammunition bags. Whether it was cotton or not, I do not know.

Mr. Hart: All right.

By Mr. Hart:

Q. Now, Mr. Witness, you have examined the draperies or curtains themselves—the outside part? A. Yes.

Q. And does that contain rayon acetate? A. I don't 1064
know.

Q. Well, you examined it, did you not? A. Yes.

Q. And after your examination you are unable to say that, is that correct? A. That is correct.

Q. You mean that you lack the qualifications? A. I don't know what it contains.

The Court: You have to subject it to a chemical test for analysis, is that correct?

The Witness: That is correct.

By Mr. Hart: 1065

Q. Do you have to subject it to a chemical test in order to determine whether it contains rayon acetate? A. You do.

Q. Do you mean to say that an expert in the field could not tell by feeling and looking at that whether it contained rayon acetate?

Mr. Rudykoff: That is argumentative.

1066 Mr. Hart: This man is called as an expert, your Honor.

The Court: The question is proper and the objection is overruled.

A. You cannot tell that fibre content by inspection.

Q. I am not talking about the amount of the content. Could you tell whether or not it has some rayon acetate in it by inspection? A. No.

Q. Could a person who is supposed to be an expert in that line test— A. No.

1067 Q. And tell it? A. No.

Q. You consider yourself an expert on rayons? A. Yes.

Q. And have you ever engaged in the manufacture of rayon material? A. Yes.

Q. When? A. Do you want the exact years?

Q. I would like to know just when.

The Court: How many years, Mr. Burgin?

The Witness: I have had five or six years.

Q. And have you seen completed products? A. Yes.

Q. And you say that after you look at a completed pro-
1068 duct you cannot tell without a chemical analysis—

The Court: You have asked that four times, now, counsellor. I do not want to hurry you, but we have had that.

Mr. Hart: As long as it has been answered, it is all right with me.

Q. With respect to sateen, how many materials or how many different types of materials can be finished in that manner? Do you understand the question? A. No.

Q. Well, sateen is not a material, it is a finish. A. It is the weave. It is not a finish. 1069

Q. It is a weave which gives rise to a soft shiny finish, somewhat similar to the back of the curtain which I showed you, is that correct? A. Yes.

Q. That is a cotton sateen, is it not—the one you examined in the courtroom? A. Yes.

Q. How many other types of sateen are there? A. You can make it out of rayon.

Q. And what else? A. You can weave it out of any fibre; you can weave a sateen weave.

Q. Out of any fibre? A. Yes. 1070

Q. And the color of the fabric would have nothing to do with it? A. No.

Q. In other words, you could have red sateen or you could have blue sateen, or brown sateen? A. You could.

Q. The color is independent of the question as to whether or not it is sateen? A. It is.

Q. Have you sold material for industrial use? A. Very little.

Q. And you do not qualify as an expert on industrial use of material, do you? A. I do not.

Q. In other words, if I ask you what type of material was used for the manufacture of airplanes, you would not be qualified to know, would you? A. Not completely. 1071

Q. I mean, you would not consider yourself an expert on that subject? A. I would not.

Q. Or making powder bags? A. I would not.

Q. Mr. Burgin, I think you are connected with the Colonial Mills, is that right? A. It is.

Q. At the time you were connected with the Southern—A. Southeastern.

1072 Q. What was the name of the concern—Southeastern Cotton Company? A. That is correct.

Q. Were you there at the time Daisart was ordering material? A. I was.

Q. And were you familiar with those orders? A. I knew there was one order.

Q. Well, you know there was one order? A. Yes.

Q. I see. And you were familiar with that order, were you not? A. I was.

Q. And at the same time, at the time that order came in you were just as expert in knowing the use of materials

1073 as you are now? A. I was.

Q. What was that order for? A. It was for a cotton poplin.

Q. Pardon? A. It was for a cotton poplin.

Q. And what was the end use prescribed on that order? A. That is too far back.

Q. If I told you that it was powder bags, would that refresh your recollection? A. There were so many orders. I can't remember them all. They were coming through by the thousands. I remember the name because it was one transaction, and one only that I recall.

1074 Q. And what was your—what capacity were you in with the Southeastern? A. I was handling the merchandising of all the converted goods.

Q. And part of your duties was to look over the order and ascertain what the goods were and who ordered the—is that correct? A. It was.

Q. Whether the priorities were in order? A. It was.

Q. And whether the use which was specified came within the priority, is that correct? A. It was.

Q. And also, I assume, you were interested in deliv-

mining whether the material which was ordered was fit for the use specified in the order, is that correct? A. No. 1075

Q. Well, now, suppose an order came into your concern for, we will say, taffeta, and the use specified was ash cans, you would not fill that order, would you?

Mr. Rudykoff: That is objected to as immaterial.

A. With a priority, yes.

The Court: He has answered it.

By Mr. Hart: 1076

Q. Even though you knew that the material was not fit for the use described in the order? A. Discretion is taken out of my hands with a priority.

Q. The discretion provides that material may be furnished for certain specified purposes, is that correct? A. Yes.

Q. And if to your knowledge as an expert you see that the material which is ordered cannot be used for that specified purpose, you say it is taken out of your hands and you have no interest in the matter? A. I can't question the military priorities. 1077

Q. You can question an order, can't you?

The Court: The witness has answered that he cannot question a military priority. That is what we are dealing with in this case.

Mr. Hart: No, we are dealing with an order, if the Court please. There has been no objection to my question. Does your Honor rule my question out?

1078 The Court: No, he may answer.

Mr. Rudykoff: I object to the fact that there is some dispute. There is a priority in question and the questions relate to priority.

The Court: We will allow the witness to answer that question.

Mr. Rudykoff: What is more, the regulations provide—

Mr. Hart: If the Court please, I object to the statement by the United States attorney and I ask your Honor to instruct the jury to disregard the District

1079 Attorney's statement as to the law.

The Court: The jury, of course, will disregard all statements made by all counsel in this case.

Mr. Hart: May I specifically ask your Honor to give them an instruction that the law will come from the Court?

The Court: Not at this time. Statements made by counsel on either side are not—

Mr. Hart: I am talking about, if your Honor please, statements as to the law.

The Court: I hope the jury will be properly instructed later.

1080 Mr. Hart: I know they will, your Honor.

By Mr. Hart:

Q. You say that you have no discretion to question the end use which is specified in an order no matter how ridiculous it may appear to you based upon your experience as to on a military order.

Q. Now, Joplin, could that be converted into—could it have gone into finish? A. Yes.

Q. Poplin is what? What is the substance of it? Cotton? 1081
A. Poplin is a plain cotton weave.

Q. It is just the finish of it that distinguishes it from any other type of cotton? A. No.

Q. What is there in poplin that distinguishes it? A. Its appearance.

Q. It is a sort of a rib? A. It has a ribbed weave. It has a weave crosswise.

Q. Without the ribbed weave what would that be, would it be just ordinary cotton? A. Ordinary cotton.

Q. It is ordinary cotton with a ribbed weave, isn't it? A. It is.

1082

Q. And it could have a sateen finish, or not a sateen finish?

Mr. Rudykoff: Sateen is not a finish.

By Mr. Hart:

Q. It could be sateen; it could be poplin sateen, couldn't it? A. No.

Q. You couldn't get a finish on that with the rib there, you mean? A. No, you would never make it look like sateen.

1083

Q. Could you finish it? A. You could dye it the same color.

Q. Could you finish it so that it would have that shiny lustre on it that is characteristic of sateen? A. No.

Q. Do you know whether poplin could be used for commercial purposes? A. No.

Q. You don't know? A. No.

Q. Do you know whether it could be used for industrial purposes? A. May I explain?

1084 The Court: Answer as best as you can.

A. By "commercial"—yes, it is used in commercial purposes. I mean, it is used in industry every day, in clothing every day—that is commerce.

Q. Could it be used in industrial purposes? A. Possibly.

Q. You mean the fact that it has the rib there doesn't prevent—or change the texture of the material, does it? A. No.

Q. Now, at the time the order was placed with Southeastern there was a scarcity of material, was there not?

1085 A. There was.

Q. And gray goods were very, very scarce? A. What was that?

Q. Gray goods were very, very scarce? A. Yes.

Q. In fact, it was hardly sold on the market at all, is that correct? A. Very little.

Q. Now, all goods are gray goods, before they get into the hands of the converter and before they are finished, isn't that so? A. It is.

Q. So we start off—there was just as much gray goods originally as there was finished goods eventually, isn't that so? A. About.

1086 Q. And it was customary, was it not, not to sell the gray goods because of the fact that a converter would want to get what he could out of the dyeing and finishing process; in other words, his profit would be greater if he finished it and dyed it? A. You mean the mill's profit would be greater if they dyed it themselves?

Q. I understand the process was that the mills would send to the converter the gray goods, would they? A. Ordinarily. Not in those days.

Q. I mean that was the ordinary practice? A. Yes. 1087
Then the converter would dye his goods or finish them, is that correct?

Mr. Rudykoff: I would like the questions to be restricted to those days instead of "ordinarily".

The Court: In those days what was the custom?

The Witness: Most mills were finishing their own product because it offered them a second profit over manufacturing.

By Mr. Hart: 1088

Q. And, naturally, the mills were in business to make as much profit as they could legitimately, isn't that so? A. Yes, they were.

Q. And for that reason instead of shipping out the gray goods, they shipped out the finished goods? A. That is correct.

Q. And the net result was that the purchaser had to take finished goods rather than gray goods, which he could formerly get before those days, is that right?

Mr. Rudykoff: I object to this line of questioning, 1089
which is very interesting, but how material is it?

Mr. Hart: I will tell you how material it is, if the Court wants me to.

The Court: The objection is overruled. The witness may answer that question.

Mr. Hart: Would you repeat that, please? I suppose I will have to withdraw it and reframe it.

1090 *By Mr. Hart:*

Q. In the old days, before those days, the competition was keen among the mills, wasn't it? A. It was.

Q. And the mills, besides being actuated by a desire for profit, were actuated by a desire for business, isn't that so?

The Court: How does he know what the mills were actuated by?

Mr. Hart: Judge, he is in the business. He has testified to a lot of things.

1091 The Court: He would not know the operation of every mill's mind.

Mr. Hart: Judge, may I—

The Court: The question is objected to.

Mr. Hart: This man has been called as an expert.

The Court: You have certain points that you want to bring out on cross examination—

Mr. Hart: May I object to these continued interruptions. The United States attorney has been permitted to try his case without interruption—

The Court: Counsel, I think that your statement now is bordering on contempt. I know that you do

1092 not intend to. Proceed with the examination.

Mr. Hart: That is what I would like to do.

The Court: Proceed with your examination, and ask your questions.

By Mr. Hart:

Q. Mr. Witness, you know the practice in mills, don't you?

The Court: In what mill?

William T. Burgin—for Government—Cross

Q. In various mills.

1093

Mr. Rudykoff: I object to that as too vague. What practice?

The Court: Objection sustained.

By Mr. Hart:

Q. Do you know the practices that prevailed with respect to the manufacture of gray goods and the sale of gray goods prior to the war emergency?

Mr. Rudykoff: That is objected to as immaterial. We are only concerned with finished piece goods and that is all the proof involved.

1094

Mr. Hart: If the Court please, your Honor has brought out by questioning and the United States attorney has brought out by questioning an inference that this defendant purchased gray goods—

The Court: The objection is overruled, counsel.

By Mr. Hart:

Q. His Honor has ruled that you may answer. Would you answer, please? A. Would you repeat that now?

1095

The Court: Would you read it, Mr. Stenographer?

Mr. Hart: I will withdraw it and I will ask the question.

The Court: Counsel, we are losing a lot of time.

Mr. Hart: Judge, I am not responsible for the loss of time.

The Court: I am not saying that you are. I am simply stating a fact. We have a question asked and

1096 we have objections made, I rule on it and then the question is withdrawn.

Mr. Hart: All right, if the reporter can find the question—

The Court: The question is withdrawn with the consent of the Court. Submit the next question.

By Mr. Hart:

Q. How long have you been connected with mills? A. For more than twenty years.

1097 Q. Then you are familiar with the practices in mills for the past twenty years, are you not? A. I am.

Q. Before the war emergency wasn't it the practice of mills to send gray goods out?

Mr. Rudykoff: That is objected to.

The Court: The objection is overruled.

A. Yes.

By Mr. Hart:

Q. And with the advent of the war and the scarcity of

1098 the materials the mills ceased to a great extent to send out the gray goods, but finished goods for themselves and dyed the goods for themselves wherever they could, is that correct? A. That is true.

Q. And they were in a position to do that because of the scarcity of material at that time, is that correct?

Mr. Rudykoff: That is objected to as repetitious.

The Court: I will allow it.

A. It was.

By Mr. Hart:

1099

Q. And the purchaser had less discretion as to whether he wanted finished or unfinished goods or goods of any given color, is that correct?

Mr. Rudykoff: I object to that as calling for a conclusion.

The Court: Objection sustained. I think you have gone far enough on this.

Mr. Hart: Judge, I want to—

The Court: The objection is sustained. What is the next question? 1100

Mr. Hart: All right.

By Mr. Hart:

Q. And wherever possible the mills insisted upon sanforizing the goods as well as finishing them, did they not? A. No.

Q. Did the mills get extra compensation per yard for sanforizing? A. No.

Mr. Rudykoff: Objected to.

The Court: The objection is overruled. Your answer was what? 1101

The Witness: No, your Honor.

By Mr. Hart:

Q. That was thrown in free?

The Witness: May I explain, your Honor?

The Court: Yes, you may explain.

1102 The Witness: The sanforizing process caused a loss in yardage, so the mill naturally charged more, but their return was no more than if they sold it on the stretched-out basis.

By Mr. Hart:

Q. You mean the goods that were not sanforized could be sold at the same price as sanforized goods? A. No.

Q. Except for the difference in the shrinkage resulting from the sanforizing process, is that correct? ——

1103 Mr. Rudkoff: I object to the characterization of the answer. The answer is perfectly clear, I submit.

Mr. Hart: I am not characterizing—

The Court: Don't go into colloquy. We will make better progress.

Mr. Hart: Judge, if every question—

The Court: Now, counsel, I think the witness should be permitted to answer.

Do you remember the question?

The Witness: I do, sir.

The Court: Then answer it.

1104 The Witness: The sanforizing process did not add to the profit of the mills.

By Mr. Hart:

Q. It did not add to the profit but did it add to the price per yard? A. It did.

Q. And if the material available was sanforized that's the way the purchaser had to take it, isn't that so? I mean

Q. You had no goods on hand which were not sanforized? 1105
A. We never had goods on hand for years.
Q. I mean, during that period? A. We never had goods ready for anybody.

Mr. Hart: That is all.

Redirect Examination by Mr. Rudykoff:

Q. In every case that you speak of there was an OPA ceiling price, was there not? A. There was.
Q. Specified by MPR 127? A. There was.
Q. Is there such a thing as a duck material? A. Duck? 1106
Q. Yes. A. Yes.
Q. And what is duck? A. Duck is a term used to describe a type of fabric, usually relatively heavy up to extremely heavy.
Q. Does duck appear like a sateen? A. No.
Q. Could it appear to be to the naked eye, to an inexpert person like sateen?

Mr. Hart: Just a minute, I object.
Mr. Rudykoff: All right, I will withdraw it.
Mr. Hart: All right.
Mr. Rudykoff: That is all. 1107
The Court: Any further questions?

(No response.)

The Court: Thank you very much, Mr. Burgin.
Mr. Hart: Wait just a minute.
Is there such a thing as a lightweight duck and a heavyweight duck?
The Witness: There is.

1108 The Court: That is all.

(Witness excused.)

Mr. Rudykoff: Mr. Lazarus.

LOUIS LAZARUS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

1109 Q. Mr. Lazarus, what is your business? A. I got a little cold and I can't hear you so well.

The Court: Suppose you stand up closer to him.

By Mr. Rudykoff:

Q. What is your business, Mr. Lazarus? A. I am a converter and jobber of cotton fabrics.

Q. How long have you been in business? A. Since beginning 1941, January.

Q. I show you Government's Exhibit 74 for identification; and ask you if that is an order received from Daisart
1110 Sportswear, and documents relating to that order. Look at it. A. (Examining) This is the order, sir, and these are the invoices.

Q. And were those papers kept by you in the regular course of your business? A. In the regular course of business.

Q. I show you Government's Exhibit 75 for identification and I ask you if that contains the papers relating to the order of Daisart's dated February 27, 1943? That

ing)? A. (Examining) Those are correct, sir. They are 1111
the orders, Daisart's.

Q. And are the papers which compose this Exhibit 75 for identification kept by you in the regular course of your business? A. They were, sir.

Q. I show you Government's Exhibit 76 for identification, and I ask you if that relates to an order from Daisart which is dated March 10th, 1945? A. Well, sir, there is a little difference here. Now, I notice this invoice here says, "White taffeta," and this here says, "20,000 yards of twill." There is a little difference there. You have here taffeta and I think that says twill here, but I can't make it 1112
out.

Q. Can you say whether the invoices which are annexed to the order were rendered with respect to the order which is dated March 10th? A. Well, I wouldn't know unless I checked this order against copies of the invoice, but the order is correct. In other words, the order is a good order, and the bills are correct, but I don't know if this order applies to this invoice.

Q. Do you have any way of determining that? A. Well, not unless I check each copy of the order and place it against this here and the total of these yards.

Q. This is the order, check it against these invoices. A. 1113
Well, as I read this here, it says 20,000 yards here, and I can't make that out. If that is 175 twills or not—it doesn't say taffeta. It says twills here.

Q. You are not certain about the invoice, is that correct? A. Yes, sir.

Q. All right. But you are certain that the order is something that you received from Daisart? A. Yes.

Q. Received by you in the regular course of business? A. Yes, and those invoices are correct, also, but it might

1114 not have been this order; it might have been one of these orders.

The Court: You mean that the invoice might be attached to the wrong order?

The Witness: Yes, sir.

By Mr. Rudykoff:

Q. Well, I show you Government's Exhibit 79 for identification and ask you if that is the ledger account which shows all of the transactions you had with Daisart (handing)? 1115 A. (Examining) Yes, sir. They show all the transactions, even those that are not priorities.

Mr. Rudykoff: I offer in evidence Government's Exhibits 74, 75, 76 and 79 for identification.

(Exhibits are handed to Mr. Hart.)

Mr. Rudykoff: Would you mark these separately for identification, please?

(Marked Government's Exhibits 82 and 83 for 1116 identification.)

By Mr. Rudykoff:

Q. Are 82 and 83 for identification invoices rendered to Daisart? A. Yes, sir, they are.

Q. And are these the duplicate originals? A. They are duplicate originals.

Mr. Rudykoff: I offer in evidence S2 and S3 for identification. 1117

(Exhibits are handed to Mr. Hart.)

Mr. Rudykoff: May I approach the bench for a moment?

The Court: Yes.

(Conference at bench outside of the hearing of the jury and outside of the hearing of the reporter.)

Mr. Rudykoff: May we proceed while the examination of those exhibits is taking place? 1118

Mr. Hart: Yes.

By Mr. Rudykoff:

Q. Mr. Lazarus, did you see anyone connected with Daisart? A. What do you mean by that, sir?

Q. Did you see any person, any individual, in connection with the orders? A. Well, offhand I would say—Ms. Smith always brought the orders in.

Q. And do you see Mr. Smith in court? A. Yes, sir, I do. 1119

Q. Who is he? A. The second gentleman there with the blue suit.

The Court: Indicating the defendant.

Q. Do you recall the first occasion when you saw him? A. Well, offhand I would say that he happened to come in and buy a few bills. It had something to do—in the casual way—in other words, in the regular business way he bought a few bills.

1120 Q. Did there come a time when he gave you these rated orders? A. Yes, it was later that he spoke about doing some work and I said, Well, if he wanted any particular type of goods, I would show him the sample, and he brought me in an order, whether I thought I could get him the goods.

Q. Did he bring an order? A. After I submitted a sample. It either came in by mail or else he brought it in, I guess, I don't remember exactly.

Q. Did you have a talk with him about the order? A. Well, it was generally in what sort of material was going
1121 to be necessary, or would he like, or was there any special type of material that he wanted.

Q. What did he say? A. Well, he merely mentioned "Show me a sample," and then if he approved it, why, and he signed the order, it would be accepted.

Q. Did he say what use the material was going to be put to? A. Well, I don't remember if I asked him, but I did ask him the end use and he said military use, and I assumed that that was secret so I never questioned him about it.

Q. Was that about all the conversation you had with regard to the use of the material? A. Offhand, sir, I would
1122 say it was.

Q. What were the terms on which you sold the material? A. Well, the terms, I generally give him credit. It is either that or net cash.

Q. And in this particular case it was net cash? A. Which particular case?

Q. As to Daisart? A. Well, each transaction I mailed him a bill and he said, "I will send you on a check," and I might have gotten the check before I even shipped the goods, sometimes.

Q. And were all the goods paid for? A. Yes, they were all paid for by check. 1123

Q. Did you see anyone else besides Mr. Smith in connection with these orders? A. Not the placing of any orders, sir.

Q. Who did you see in connection with any transaction related to the orders? A. None that I recall excepting once some other gentleman did come in with Mr. Smith and he merely said that he was associated with him in a capacity, as I understood it—I don't remember questioning him—as a salesman, once or twice, I don't remember.

Q. Will you look around the court and see if you see anyone who resembles or is that individual? 1124

(Witness complies.)

A. I think that gentleman at the last seat there (indicating).

Q. To the extreme right? A. Yes, sir.

Mr. Rudykoff: Indicating the defendant Deeb.

The Witness: I beg your pardon?

Mr. Rudykoff: That is all right.

Q. Have you told us all you know about these transactions? A. Well, as far as I can recollect, I have. 1125

Mr. Rudykoff: Have you examined those exhibits?

Mr. Hart: Yes. No objection.

Mr. Rudykoff: I offer in evidence 74 for identification, 75 for identification, 76 for identification, 79 for identification, 82 for identification, and 83 for identification.

Mr. Siegel: Objected to on behalf of the defendant Deeb.

1126 The Court: They may be received. You can make a motion later on if they are not connected.

(Marked Government's Exhibits 74, 75, 76, 79, 82, 83.)

Mr. Rudykoff: With regard to 74 in evidence, if the Court please, the count is 7. 75 relates to count 16. 76 relates to count 20.

May I read to the jury at this time?

The Court: Yes.

Mr. Rudykoff: Exhibit 74, stationery of Daisart,
1127 February 7, 1945, addressed to L. Lazarus, 92 Leonard Street.

"Gentlemen:

"Kindly order for our account 50,000 yards 175 twill as previously delivered for February and March delivery.

"Yours truly,

George Smith.

"Rating AA1.

1128 "End use: Ammunition filter bags."

Exhibit 75, on the stationery of Daisart, February 27, 1945, addressed to L. J. Lazarus.

"Gentlemen:

"Please order for our account 25,000 yards 110/44 taffeta, 92/44 taffeta or both.

"Yours truly,

George Smith.

"Rating AA2x.

1129

"End use: Powder filter bags."

And a stamped certification dated February 27, 1945, signed by George Smith.

On the stationery of Daïsart, Exhibit 76, dated March 10th, addressed to L. J. Lazarus.

"Please order for our account 20,000 yards 175"

Then there is a word which is twill or something else—

"at ceiling, delivery as soon as possible.

1130

"Yours truly,

"G. W. Smith.

"Rating AA1.

"End use: Powder filter bags."

Stamped certification signed by George Smith, dated March 10, 1945.

You may inquire.

Cross Examination by Mr. Hart:

1131

Q. Mr. Lazarus, you say that Mr. Smith came to you and asked you whether you could get him some materials, is that right? A. Yes.

Q. At that time all kinds of materials were scarce, were they not? A. Well, I would not remember when you say all kinds of materials. I wouldn't put it that way.

Q. There was a scarcity of most materials? A. No, sir. He asked for a special particular type.

1132 The Court: You do not talk loud enough, Mr. Hart. Apparently the witness did not hear your question.

Mr. Hart: When he gets me angry, Judge, I will talk a little louder.

The Court: He did not understand your question.

By Mr. Hart:

Q. Mr. Witness, was there a scarcity of materials in the market at that time? A. Evidently there was.

1133 Q. They had people whom they paid to go around and look for material, is that right? A. That I wouldn't know, sir.

Q. Did you ever hear of finders or brokers? A. I have heard of brokers, yes.

Q. And brokers were people that were hired to look around for material and they got a commission if they found it? A. Well, I will be honest with you: I never had any experience with them.

Q. All right. You say that you did produce samples and filled the order from the samples, is that right? A. Well, he asked me for a certain type of material that he

1134 thought was suitable and I got him a sample and I asked him, "Would that be acceptable or approved?" If it was, then he would accept it.

Q. And sometimes you could not get the type he wanted and you submitted a sample and he took that, is that so? A. No, he didn't. He wouldn't say it that way. I couldn't always get the goods that he asked me for.

Q. And when you couldn't get the goods that he asked for, do you remember occasions when he took the goods that you could get? A. No, I wouldn't remember that.

Q. You would not say that it didn't happen? A. I wouldn't say that it didn't happen. 1135

Mr. Hart: That is all.

The Court: Any questions?

Cross Examination by Mr. Siegel:

Q. You say that Mr. Deeb was with Mr. Smith when he came into your place of business? You mentioned that on direct examination when the District Attorney asked you who else was there. A. I said that gentleman (indicating). I didn't remember his last name. I knew it was Mr. Al or something like that. 1136

Q. Were you ever introduced to him at all? A. I think he might have come in with Mr. Smith one time and he might have said, "This gentleman here is with me."

Q. But you do not have any independent recollection about that, do you? A. No, sir, I wouldn't.

Q. And Mr. Deeb, or Al, as you refer to him, didn't play any part in any discussion about these orders that you were placing for Daisart? A. Never on placing any orders.

Q. You didn't know what capacity he was in when you were discussing the matters with Mr. Smith? A. No, sir, I— 1137

Q. You just happened to see him there with him? A. That's right, I—

Mr. Rudykoff: I object. I would like to have the witness answer the questions.

Mr. Siegel: That is all.

The Court: Who called this man Deeb as Al?

The Witness: Well, he was in there—he was introduced to me as Al.

1138 The Court: Who introduced him to you as Mr. Al?

The Witness: I don't remember, sir, but I think Mr. Smith came in with him one time.

The Court: Was Mr. Smith the person who introduced him to you as Mr. Al?

The Witness: Yes, sir.

Mr. Rudykoff: That is all. Thank you, Mr. Lazarus.

The Court: All right, you can go.

1139 (Witness excused.)

Mr. Rudykoff: Mr. Pindek.

ABRAHAM PINDEK, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

Q. Mr. Pindek, will you please keep your voice up so that all the jurors can hear you. What is your profession? A.

1140 I am an attorney.

Q. Admitted to practice when? A. In June, 1922.

Q. And do you practice before the bar of the state of New York? A. I do.

Q. During 1945 how were you employed? A. Well, part of that year I was with the War Production Board of the United States Government.

Q. And during that time did you become familiar with a matter relating to Daisart Sportswear, Inc.? A. I did some work on it.

Q. While you were assigned to that work did you visit 1141
the premises of Daisart Sportswear? A. I did.

Q. On how many occasions? A. I believe two.

Q. Now, on this first occasion, do you recall when that was? A. Sometime in August of 1945, I believe.

Q. At that time where did you go? A. It was in Newark and I don't know whether I can remember the street—Clinton Street, I believe.

Q. It began with a C anyway? A. I believe so.

Q. And who did you see? A. A Mr. Smith.

Q. Do you see him in court? A. Well, I can't see very 1142
well at a distance.

Q. Will you walk up—are you nearsighted? A. Yes, I do wear glasses.

Q. Can you use them? A. They may help. It is several years ago and I don't remember.

Q. Well, if you don't, say so. A. No, I don't remember.

Mr. Rudykoff: The witness said that he did not remember who Smith was or what he looked like.

Q. You had a talk with someone who described himself as Mr. Smith?

1143

Mr. Hart: I object to what this someone described him as. It is a conversation with a person—

The Court: I think I will allow it. The jury can give such weight to it as they think best.

A. Yes, that is correct.

1144 *By Mr. Rudykoff:*

Q. And what kind of a place was it? A. It was one flight up in a small building, two stories, I believe—not more than three. If my recollection serves me right it looked like a factory building.

Q. Did you see anyone else at that time? A. There was another man in the premises at the time but I didn't get his name. I don't know who he was.

Q. On that occasion did you make an appointment? A. Yes.

1145 Q. And before you made the appointment, did you ask for anything?

Mr. Hart: I object to what he asked for, if the Court please, unless he asked it of the defendant.

The Court: You asked this at the Daisart Sportswear place of business at the time of your visit?

The Witness: Yes, I asked for Mr. George Smith, I think the name was.

The Court: And did somebody come to talk to you then?

The Witness: Yes.

1146 The Court: And did he tell you he was George Smith?

The Witness: He did.

The Court: Did you have a conversation with that man?

The Witness: I did.

The Court: Tell the jury the entire conversation you had.

Mr. Hart: Objected to.

The Court: The objection is overruled.

The Witness: I asked for Mr. George Smith and a gentleman present said he was George Smith, and then I asked him whether he was connected with the Daisart Sportswear Company, and he said he was. And then I asked him the nature of their business, and he said they did contracting work for various firms, and some for the government. 1147

And then I asked him whether he did any work on priorities, and he said he did, and he gave me the number of priorities that he was using. And I made a note of it.

And then I asked him for his books, and he said that he didn't have them there at the time, but he would be glad to show them to me if I would make an appointment with him when he could get in touch with his accountant, and that was done. 1148

That was about the substance of the conversation.

By Mr. Rudykoff:

Q. Did you attend at the place of business a second time? A. Yes, I did.

Q. And at that time who was present? A. At that time there was a Mr. Berman, another employee of the War Production Board, myself, and Mr. Smith. We met pursuant to an appointment arranged by telephone. 1149

Q. Was that also in the month of August, 1945? A. I believe it was the end of August.

Q. Now, at that time was the accountant for Daisart present? A. I can't remember his name, but we did meet the accountant.

Q. At that time was there any conversation? A. The only conversation that I can recall at the moment is that

1150 we asked for the books. That was the purpose of our visit.

Q. And in response to that question what was said and what was done? A. Well, I recall that we examined some check vouchers for the current month. And we asked for any other books kept by the firm, and I recall that the only books there were that we saw was the checks and the accountant said that he had not gotten up a set of books for the firm.

Q. At that time did you see any records other than the check books? A. I remember we saw the checkbook, some
1151 check vouchers for that current month, and also some, I believe, some bills containing the stamp with a priority number that had been used by the firm to purchase some merchandise. That is as far as I can recall all we were able to see.

The Court: Did you ask for any other books?

The Witness: We asked for the company's complete set of books, kept by the firm, and that was what the accountant told me, that he had not gotten around to getting up the books.

The Court: Did you ask them whether they had
1152 any records there that you could examine even though they had not been put in book form?

The Witness: Yes, we asked them for any statements and bills for purchases or sales.

The Court: Were they produced?

The Witness: We saw only the names of the suppliers of merchandise from the checks. There were no bills produced, no; other than possibly some statements with the priority number on those. We did get that. Whatever he had he said he would give us, but they didn't keep a very complete record.

By Mr. Radykoff:

1153

Q. With regard to sales what records, if any, did you see? A. We couldn't get any records at all of sales, only the purchases. He did give us that, to the extent I mentioned from his vouchers.

Q. What did he say about his sales records, did he have them or didn't he? A. No, he just gave me the name of one firm; Metals Disintegrating Company, that he said he had done business with and sold goods to for use by the United States Government in the making of ammunition bags. That is the only one that I can recall he gave me.

1154

Q. With regard to priorities; among the priorities that you examined, did you observe some which related to ammunition bags or filter bags? A. Yes, he gave us the name of the Metals Disintegrating Company.

Q. Did you ask him for whom he did that work? A. He mentioned that name. We did, yes.

Q. Did he respond that it was Metals Disintegrating Company? A. Yes, and he gave us the number of the priority that he had been given on the purchase of these goods.

Q. Did you subsequently attend at the place of business of Metals Disintegrating Company? A. I did.

1155

Q. You mentioned a person by the name of Wiener attending with you on this particular occasion? A. Mr. Berman.

Q. Mr. Berman, I am sorry. What is Mr. Berman's profession? A. Mr. Berman is an accountant.

Q. And with regard to the records, who made the examination? A. Well, they were made by both Mr. Berman and myself. Part of the data I may have copied at his direction and some of it I examined myself. In fact, we both went over the vouchers. That was practically all

1156 the examination, consisted of, those check vouchers that he had.

Q. With regard to piece goods, was there any conversation or talk? A. Well, the purpose of our call was in regard to his purchase of the piece goods, and we just asked him the names of the companies from whom he had bought, and that information we secured mainly from what he had given us in the way of his checks paid to various companies. We merely listed the names from his checks.

Q. With regard to sales of piece goods, sales made by him for Daisart Sportswear Company, did you have any
1157 talk? A. We asked him about whether any goods were sold.

Q. What did he say? A. And he said that there were no goods sold except possibly he might have returned some goods for exchange occasionally that he couldn't use.

Q. When did you sever your connection with the War Production Board? A. I believe it was October 31st of the same year, 1945. I was there about two months.

Q. And are you in private practice now? A. Yes, I am.

Q. Are you in any way employed or connected with any governmental agency? A. No, I am not.

1158 Q. Are you here pursuant to subpoena? A. Yes.

Mr. Rudykoff: You may inquire.

Cross Examination by Mr. Hart:

Q. How long were you at Daisart's place on the second occasion? A. On the second occasion when we examined the books, the check records, rather, I believe it was an hour, several hours.

Q. You were there three days, weren't you? A. No, we went there—I went there on the first occasion myself. 1159

Q. The second occasion, how many days were you there examining what you said, the books, and then you said the checks? A. Well, my recollection was that we got our information just in the afternoon of the day we were there. I don't recall returning. We may have returned the next day.

Q. Didn't you say you were there three successive days going over books and checks and records? A. I can't remember returning but we may have been back another day. 1160

The Court: Did you keep a diary of your work?

The Witness: Well, there were some records kept in the Government office but I didn't take them with me when I left the service.

By Mr. Hart:

Q. You started to say that you were there going over their books. As a matter of fact, you did have the check-books, the sales books and the purchase books, didn't you? 1161

Mr. Rudykoff: He said nothing about a sales book.

Mr. Hart: If the Court please, I do not want these interruptions.

The Court: Now, counsel—

Mr. Hart: May I object?

The Court: Now, you address your remarks to the Court.

1162 Mr. Hart: I am addressing myself to the Court.

The Court: The objection is overruled. The question is perfectly proper.

Q. Mr. Witness, do you recall my question? A. Yes, I do. We had these vouchers and the checkbooks, but there were no regular sales or purchase books, because that was our job, to look at them.

Q. Whether they were regular purchase books or regular sales books, did you look over purchase books and sales books, whether they were regular or not regular, or can you
1163 say whether you did? A. Well, I can recall that we asked for these books, and that we were given the current month's vouchers from which we would get information as to the supplies by watching for the checks and that is all.

The Court: Other than the checkbook and the vouchers, were you given any records either in the form of a book or otherwise which showed the purchases and sales of the Daisart Sportswear?

The Witness: I can't recall any other records, sir.

By Mr. Hart:

1164 Q. You can't recall any other records and you can't recall whether you went back there three days in a row? A. No.

Q. And when you went to Metals Disintegrating, did you check up to see what number of bags they received from the Daisart? A. Well, yes. There we merely requested copies of the invoices, I believe it was, which the company was good enough to make up for us and give us. I think I went there myself.

Q. And you just asked for invoices? A. That is right. 1165

Q. And you let them make them up? A. That's right.

Q. You didn't look over their books, did you? A. Well, I wouldn't say that we didn't, because that was our work. We may have looked over the books, but if the company offered to give us exact copies of the materials we needed, we would take it. We would verify it first to make sure that that is the information that we were interested in—

Q. Now, Mr. Witness, let me ask you this question: Did you ask to look over their books or were you satisfied to take their invoices?

1166

The Court: You mean at the Metals Disintegrating?

By Mr. Hart:

Q. At Metals Disintegrating. A. I think we did examine whatever records we felt were pertinent and necessary at the time.

Q. How long were you there at Metals Disintegrating? A. Well, that might have been a couple of hours.

Q. Did you make a record of how many bags were shipped to Verona? A. I recall being furnished with the information. We just took the statements from the company. They gave us the necessary information that we needed. 1167

Q. But you didn't take the records from the books, did you? A. That I don't know. We may have looked at them at first. I don't recall.

Q. That is the best I can remember at the moment.

Mr. Hart: All right.

The Court: Any questions, Mr. Siegel?

1168 Mr. Siegel: No questions.

The Court: Any redirect?

Mr. Rudykoff: No, sir.

The Court: All right, thank you.

(Witness excused.)

The Court: We will take a recess at this time for ten minutes.

(A short recess was thereupon taken.)

1169 Mr. Rudykoff: Mr. Berman.

The Court: Mr. Hart, didn't I understand that you wanted to get away at ten minutes to five tonight?

Mr. Hart: I have that affair tonight.

The Court: We will try to expedite matters until then and see how we progress.

Mr. Hart: Could we approach your Honor for just a moment?

The Court: Yes.

1170 (Conference at bench, not within the hearing of the jury and not within the hearing of the reporter.)

IRVING BERMAN, called as a witness on behalf of the government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

Q. Mr. Berman, will you please raise your voice in response to questions so that all the jurors can hear you.

What is your profession? A. I am an accountant. 1171

Q. How long have you been practicing that profession? A. For about 20 years.

Q. Are you presently connected with any firm? A. With an accounting firm, yes.

Q. What is the name of the firm? A. Holmes & Davis.

Q. In 1945 were you connected with the War Production Board? A. I was.

Q. In what capacity? A. As an investigator.

Q. And did you have something to do with priorities? A. Yes.

Q. Do you recall a matter entitled Daisart Sportswear, Inc.? A. Yes, I do. 1172

Q. Do you recall attending the place of business of Daisart Sportswear? A. Yes.

Q. When? A. Sometime in 1945, I don't know exactly when, but my report would indicate the date.

Q. I do not know if I have the report you refer to, but is this what you have reference to (handing)? A. (Examining) This is the report. Yes, this is the original of my report prepared by me.

Mr. Rudykoff: May I mark it for identification? 1173

(Marked Government's Exhibit 84 for identification.)

Q. Now, you have stated that you do not recall without refreshing your recollection the date of your visit. Will you please look at the report and after your memory is refreshed put it aside and tell us what the date is. A. August 27, 1945.

1174 Q. Where did you attend, the address, at what address? A. At the address of the Daisart Manufacturing Company, in Newark, New Jersey, I believe.

Mr. Hart: I do not want to object to the question, but I understood the previous question was, what was the date of the report.

The Court: No, the date of his visit. The report was used to refresh his recollection.

Mr. Hart: All right.

1175 Q. Do you recall at the present time the address of the Daisart Sportswear? A. Not the street address, no.

Q. Will you refresh your recollection from the report? A. 99 Central Avenue.

The Court: You may keep that paper in your hand. If there is any time that you need it to refresh your recollection, you may do so.

Mr. Hart: I have no objection to that.

Q. Who was present at that time—we are speaking of August 27, 1945, is that correct? A. Yes.

1176 Q. Who was present at that time? A. Mr. Pindek, another investigator with the War Production Board, and myself visited the premises on that day and we saw Mr. Smith.

Q. Do you recognize Mr. Smith? A. I do.

Q. Will you identify him? A. Mr. Smith is sitting to the second man facing me, to my right.

The Court: Indicating the defendant.

Mr. Hart: The defendant Smith.

Q. Who else was present on that occasion? A. I think 1177
the accountant was there at that time, too.

Q. Do you recall his name? A. No, I do not.

Q. Will you refresh your recollection? A. Louis Weiner.

Q. How long were you at the Daisart Sportswear place of business on August 27th? A. Oh, about three or four hours.

Q. Did you return thereafter? A. I believe not. I don't recall, but I don't believe we did.

Q. During that time did you ask for books and records? A. Yes, I did.

Q. What did you ask for? A. I asked for all books of 1178
original entry—books of account that would normally reflect the transactions of the business.

The Court: Whom did you ask for that?

The Witness: Mr. Smith.

The Court: The defendant?

The Witness: Yes.

Q. What did he say in response to your request? A. He gave me the books that he had and said that these were all the books that he did have. I believe that there was a sales book and a check book and some cancelled 1179
vouchers, and also some invoices, creditors' invoices.

Q. Did he have a purchase book? A. He did not.

Q. With regard to his purchases what records did he have? A. The invoices from the creditors which he gave me—not all of them—but which ever ones he said were available he gave me.

Q. Did he have any book in which those purchases were entered? A. I didn't see any.

1180 The Court: Did he have a purchase ledger?
The Witness: I didn't see any.

Q. Did you ask for it? A. Yes, I asked for all books.

Q. What did he say with regard to having one or not having one? A. All he told me was these—the books that he gave me were all that he had.

Q. What did you do with the invoices that he handed over to you or produced? A. Well, I examined them and made a listing of the various items which he purchased.

Q. And did you also list the names of the suppliers? A.
1181 Yes, with the names and addresses.

Q. Now, with regard to payments, what records did he have? A. He had a checkbook.

Q. Do you recall on what bank? A. I do not, but I believe my report would have it.

Q. Refresh your recollection. A. The First National Bank and Trust Company of Montclair, New Jersey.

Q. Did you see at that time cancelled checks? A. I did.

Q. Did you see any other records relating to payments made by Daisart Sportswear, Inc.? A. No, I did not.

Q. You have mentioned a checkbook and some cancelled checks. A. That's right.

1182 Q. Did you examine the checkbook? A. I did. I examined the checkbook. It was actually checkbook stubs. Checks had already been issued.

Q. Did you examine the cancelled checks? A. I did.

Q. As a result of that examination what did you find in connection with any other bank account? A. Upon examining the endorsement of one of the checks I found that Mr. Smith, that is, the Daisart, maintained another checking account or another bank account with the Fidelity Union Trust Company in Newark, New Jersey.

Q. At that time was any checkbook stubs or full check- 1183.
book produced on the Fidelity Bank? A. No, it was not.

The Court: Did you ask for it?

The Witness: I did not. I asked for all books at the time and none were submitted to me other than what I received.

Q. With regard to payments, have you mentioned all of the books and checks and records you saw? A. I believe I did.

Q. You mentioned a salesbook. Did you see a salesbook? 1184
A. Yes, I did.

Q. And what kind of sales were entered? A. Sales of materials—that is, sales of finished goods which Daisart manufactured.

Q. Did you have any conversation with regard to the business Daisart was doing? A. I don't recall that.

Q. You have described sales connected with goods manufactured by Daisart, is that correct? A. Yes.

Q. Did you find any entries relating to sales of piece-goods? A. None.

Q. Did you see any records with relation to sales other than this salesbook you have already described? A. No, 1185
I did not.

Q. And what period was covered by that salesbook? A. The period between March 28, 1944, and July 27, 1944. No, I have to retract that.

Q. Are you refreshing your recollection about that? A. Yes. January 1, 1944, to August 24, 1944.

Q. Did those sales records contain records which were continuous for that period? A. With the exception of

1186. sales between March 28, 1944, and July 27, 1944. These were not available for my inspection.

Mr. Hart: Which period was that?

Mr. Rudykoff: March 28, 1944—

The Witness: To July 27, 1944.

Q. So that you saw sales records for the period January, 1944, to August 24, 1945? A. That is correct.

Q. Excluding that period from March, 1944, to July, 1944, or approximately four months, is that right? A.

1187 That is right.

Mr. Hart: Wait a minute. I don't quite get that. He saw the sales from January 1, 1944, to August, 1944, excluding March to July, 1944?

The Court: That is right.

The Witness: Yes. May I explain that, counsel?

The Court: You explain it, yes.

The Witness: One of the chargebooks was missing and that chargebook had those days' sales in it.

The Court: You mean it had the record of four months' sales?

1188 The Witness: That's right.

Mr. Hart: My confusion arises out of—

The Court: Counsel, you may straighten out your confusion on cross-examination.

Mr. Hart: All right.

The Court: I think that is the better way.

Q. With relation to the purchases made by Daisart, did you make any computation? A. I don't recall, but I believe that I did take some sort of record of the purchase.

invoices at the time that I was there, of the ones that were 1189
available for inspection.

Q. Well, do you recall whether the purchases, so far as you could ascertain them, were more in amount or less than the sales? A. I don't recall that at all.

Q. Very well. Did you have some talk about the sale of piecegoods? A. Yes, according to my report here, I did.

Q. What was the talk and with whom did you have it? A. I spoke to Mr. Smith with reference to the number of checks issued to companies from which were purchased piecegoods, and it was in connection with 35 checks which 1190
amounted to approximately $281,000.

The Court: $281,000?

The Witness: Yes; $281,000.

A. (Continuing) Which were issued to companies selling piecegoods. And Mr. Smith stated at that time that these payments were for piecegoods purchased from those companies, and that with the exception of the piecegoods on hand, the balance had been cut up by Daisart and processed into manufactured items.

Q. Now, did you have some talk about priorities? A. 1191
Yes.

Q. With whom did you have it and what was said? A. With Mr. Smith and I asked whether what priority he had, and he told me that the purchase of the goods was predicated upon a blanket order which Daisart received from the Metals Distintegrating Company to purchase all the piecegoods needed to manufacture powder filter bags. Mr. Smith also stated that he was advised by Metals Disintegrating Company that they were unable to obtain

1192 the necessary material for the powder bags and therefore had given Dai-art the Blanket order as mentioned heretofore.

Q. And did you thereafter go to the place of business of Metals Disintegrating Company? A. Yes, we did.

Q. And did you make an examination at that place of business? A. Yes, we made an examination.

Q. And did you subsequently examine certain records of certain suppliers? A. Yes.

Mr. Rudykoff: You may inquire.

1193 The Court: Did you ask the defendant Smith whether he had any inventory records which would show the yardages he had received or his company had received?

The Witness: Yes.

The Court: What did he say?

The Witness: He said he did not maintain any inventory records.

Mr. Hart: May I have the paper from which this witness refreshed his recollection?

The Court: Yes.

1194 (Paper handed to Mr. Hart.)

Mr. Hart: May I have your Honor's indulgence for just two minutes until I look this over?

The Court: Yes.

Cross Examination by Mr. Hart:

Q. I want to clear up one point, Mr. Berman. A. Yes, sir.

Q. You said that you saw all of the checks for the period commencing January 1st— A. Not the checks. 1195

Q. All of what? A. The sales.

Q. To what? A. The sales.

Q. The sales? A. That's right.

Q. For the period commencing January 1st to August, 1945, excluding the period commencing March 28, 1944, to July 27, 1944? A. That's right.

Q. Do you mean 1944 or 1945?

Mr. Rudykoff: The first date is January, 1944.

1196

A. You see, it is January 1, 1944, to August of 1945.

Mr. Hart: I see.

The Witness: These were in numerical sequence in bound books. One of those bound books was missing. Mr. Smith could not locate it at the time.

Q. I see. But all of 1944 you had up to that time? A. Up to August.

Q. Did you know whether there were any purchases during the period commencing March 28, 1944, and July 27, 1944, as evidenced by the checks? A. Well, if my report shows that, I believe you can tell from the report whether there were. 1197

The Court: Suppose you look at it yourself.

The Witness: Or it may be—I don't know. Let me refresh my memory on that.

Mr. Hart: Surely.

(Paper handed to the witness.)

1198 The Witness: I don't have a record of examining anything in 1944 as far as the checkbook stubs are concerned. This is 1945.

Q. I believe you testified before that the total amount of purchases as evidenced by the checks which you found or which were exhibited to you was two hundred and some odd thousand dollars?

The Court: He said that the total amount of 35 checks—

1199 The Witness: Was $281,000.

Q. Did you pick out all of the checks that were payable to sellers of merchandise? A. All that were available, yes.

Q. And all were available except for that four-months period, is that correct? A. Well; no. We are not talking about checks now. You are confusing that four-months period with the sales. These checks were for merchandise purchased. The sales were for merchandise sold by Daisart. It is two separate and distinct items.

Q. Then you had the checks for the entire period, or
1200 the stubs for the entire period, before you, is that correct? A. As far as I can recall, I believe so.

Q. And those 35 checks totaled $281,000, is that correct? A. I believe that was in 1945.

Q. You had the salesbook before you for the entire period except those months which we have discussed before? A. Yes.

Q. And whom were the sales made to? A. Oh, I don't recall that. A great deal of them were, I believe, to Metals Disintegrating.

Q. Were there any of any significance to anybody but Metals Disintegrating? A. I don't recall that. 1201

Q. Didn't you make an itemization of it? A. I believe so. I may have. If my report calls for it, I believe that I did.

Q. You checked the accounts of the people who had made the sales to Daisart, did you? You went to their places of business? A. Some of them, yes.

Q. And did you find that these checks had been issued in payment of merchandise sold by them? A. Yes.

Q. And did they correspond to the amounts of merchandise sold by these people to Smith? A. I don't recall that. 1202
I believe that the amounts corresponded with the amounts sold, yes.

Q. And did you make any report on that? A. I believe I have some information on that, yes.

Q. Well, you haven't an individual itemized statement of what you found in each place that you went to; that is, each seller of merchandise, is that correct? A. No, I don't have that in my report.

Q. What percentage of the sales would you say was to other people? That is, sales of Daisart were to other concerns than Metals Disintegrating? A. I couldn't re- 1203
member that at all, unless my report reflects that information.

Q. I just looked at the report and find nothing. A. If there is nothing in there then I don't recall it.

Q. But you do recall that substantially the entire sales were made to Metals Disintegrating? A. A great deal of them were, yes, but there were others—I know there were other sales.

1204 Q. There were some sales by Daisart of leggings, Navy leggings? A. Overalls and leggings.

Q. Army kits? A. I don't recall that, but my report reflects what these sales were, counselor.

Q. Will you show me where it reflects them? A. Sure.

Q. You can probably find it quicker than I can.

The Court: Read it out loud to the jury.

The Witness: An examination of the sales from January 1, 1944, to August 24, 1945, disclosed that recorded were as follows:

1205 "January 1st to March 28, 1944, $14,280.

"July 27th to December 31, 1944, 36,132.

"January 1st to August 24, 1945, 62,533.

The above sales constitute charges made for labor and also labor and material in the manufacture of overalls, powder bags, mackinaws, battle jackets, crawlers, coveralls, bathing trunks and shorts. That is what the—

Q. You haven't got them itemized separately? A. Absolutely not.

1206 Q. How much for powder bags and how much for leggings? A. I don't believe so.

Q. On the following page you have them totalled; the sales total for 1944 and the sales total for 1945 to August 22nd, is that correct?

The Court: You are questioning the witness about a document or the contents of a document that neither side has offered in evidence. Is there anything confidential in this report?

Mr. Rudykoff: None whatsoever.

The Court: I think the Court will mark that as 1207
an exhibit and it may be read to the jury either by you or by the Government's attorney, whichever one decides to do it.

Mr. Hart: May I state for the record that I am simply acting under a fundamental rule, where the witness has refreshed his recollection from a document, I have the right to use it.

The Court: Yes, I find no fault with your using it. You are well within your rights. But here is a paper, part of which we have had read by the witness. It has been constantly referred to. 1208

May I ask, is this your official report made after you made your official investigation?

The Witness: That's right, that is the original one.

The Court: And you have had to constantly refer to it to refresh your recollection?

The Witness: Yes, absolutely.

The Court: And it contains many matters in there, does it not?

The Witness: Yes, all matters pertaining to this.

The Court: The Court will mark it in evidence. 1209

Mr. Hart: Over objection.

Mr. Siegel: Objected to on behalf of Mr. Deeb.

Mr. Hart: May I finish my objection?

The Court: Yes.

Mr. Hart: I object to it upon the grounds that it is not binding upon this defendant. There may be conclusions in there of this witness which are not factual and certainly would not be admissible. I am simply using it now for the purpose of questioning

1210 this witness, on the basis of a document which he used to refresh his recollection, and I think that your Honor should look at it to see whether they are conclusions as well as facts therein before it is received in evidence.

The Court: Yes, I will do that.

Mr. Hart: Will your Honor do that subsequently and reserve your offer?

The Court: I will do that. It has been so constantly referred to by both parties, both you and Mr. Rudykoff, and by the witness himself, that it

1211 should in the interests of justice be marked in evidence, but I will examine it as you suggest.

Mr. Hart: All right.

Q. Mr. Witness, on the first page of this report of yours you have listed the total sales in 1944 and the total sales in 1945? A. Yes, sir, the approximate totals.

Q. The approximate totals? A. That is right.

Q. And they approximate $275,000, do they not? A. That is from the period January 1st to August 24, 1945.

Q. January 1, 1944? A. To August of 1945.

Q. And this does not include the four months' period of

1212 sales which were not available to you? A. That's right.

Q. So if you added that you would have a sum in excess of $275,000? A. That's right.

Q. And the amount of material you say purchased by this defendant as evidenced by the checks which you took was $281,000? A. The 35 checks.

Mr. Rudykoff: That is not the testimony at all.

Mr. Hart: The checks which he took.

Mr. Rudykoff: 35 checks, yes. 1213

Mr. Hart: If the Court please, I do not think it is fair for the district attorney to state that that is not the testimony. If he wants to make an objection I think he should do it, but to prompt every witness who takes the stand certainly is not helpful to this defendant.

The Court: I do not feel that he is—

Mr. Hart: There was no objection, your Honor. He makes an assertion here.

Mr. Rudykoff: I am making an objection on the ground that the question framed does not contain 1214
accurate facts and is misleading.

The Court: I think that there are some—

Mr. Hart: Will your Honor have my question read and will you have the district attorney's statement read?

The Court: No, I will sustain the objection and you ask another question.

Mr. Hart: I will ask the same question just for the purpose of the record:

Q. Mr. Witness, the sum total of the checks which you took a record of was $281,000, is that correct? A. No, it 1215
was the 35 checks. There were more checks but I only took a sum total of 35 checks.

Q. The total of the checks which you took was $281,000? A. That's right.

Q. Is that what you understood me to ask before? A. Yes.

Q. There were other checks, for instance, for labor? A. I don't recall what the other checks were.

1216 Q. Were there any other checks there for purchases of piecegoods? A. No.

Q. You took all of the checks that you could find payable for piecegoods, isn't that so? A. Yes, I believe so.

Q. You went there for that purpose, to determine how much piecegoods this defendant bought, isn't that so? A. Yes.

Q. And how much in completed products he sold? A. Yes.

Q. And you found upon your investigation 35 checks, which according to your statement now represented all
1217 of the checks payable for piecegoods? A. That I saw.

Q. That you saw? A. Yes.

Q. And you saw the checkbooks right down from the period January 1st to August, 1945? A. No. I think I only saw the 1945 checkbooks. You are talking about sales and checkbooks. They are two different items.

The Court: When you were given the checks and the checkbooks and the cancelled vouchers, did you get the checkbooks that covered the period covered by the salesbooks?

1218 The Witness: I don't think so. I don't recall that.

The Court: What period of time did the checkbooks and the cancelled vouchers cover?

The Witness: My report will indicate that, I believe.

The Court: Take your report and look at it.

Mr. Hart: May we, while he is looking at it, your Honor, have an understanding, to save time, that in the information there are only three alleged purchases in 1944?

The Court: The information—

Mr. Hart: I mean, so that I can proceed. 1219

The Court: The information will be explained to the jury and the dates will be mentioned.

The Witness: An examination of the checkbook stubs and the bank statements of the First National Bank and Trust Company disclosed that between February 26, 1945, and May 16, 1945, Daisart issued 35 checks amounting to approximately $281,000 to companies selling piecegoods.

The Court: That is from March 26th?

The Witness: February 26th.

The Court: February 26, 1945? 1220

The Witness: To May 16, 1945.

The Court: And was that the only period of time for which you received a checkbook or checkbooks and cancelled vouchers?

The Witness: Oh, no. I had it for more of a period than that, but I don't have in my report what period I did cover.

The Court: You just covered the period then of perhaps three months?

Mr. Hart: If the Court please, I object to that question. That is not what the witness said. 1221

The Court: I asked him a question. Did you just cover, when you computed these 35 checks, that period of February 26, 1945, to March 16, 1945?

The Witness: No; I must have covered a greater period than that, but it is just in this period that these checks were issued.

The Court: These 35 checks were issued within that period?

The Witness: That's right.

1222 Q. Mr. Witness, you do not know when the sales of the completed products of that merchandise were made, do you? A. I do not.

Q. In tracing the salesbook or looking at the salesbook and seeing the completed sales, you don't know just what material went into the sales of any given date? A. I do not.

Q. You say your search covered a greater period than that, is that right? A. Yes.

Q. And you were careful in the performance of your duties, were you not? A. Yes.

1223 Q. And you were looking for every check that you could possibly find which would indicate a purchase of merchandise? A. That is right.

Q. And you went through all of the checkbooks? A. That were available.

Q. Of this concern? A. I don't recall that they were all available.

Q. Pardon me? A. Mr. Counselor, I don't say that they were all available. All that were available to me I went through: I don't recall which were and which were not.

1224 Q. Did you make any note in your report that any of the checkbooks were not available? A. No, I did not.

Q. As a matter of fact, you made a note that the salesbooks for four months in 1944 weren't available? A. That's right.

Q. And if the checkbooks weren't available it was part of your duty to report that in your report? A. That's right.

Q. In the absence of any such statement in your report, would you say that all of them were available or you would have reported otherwise? A. Apparently they were all available for the one bank. 1225

Q. Did you go down and examine the account in the other bank and see whether or not it related to purchases? A. I wasn't able to get that information.

Q. You were a United States official, were you not? A. Yes.

Q. Did you go to the bank and try to get it? A. I believe I did.

Q. And did you speak to someone down there about getting it? A. Yes, sir. 1226

Q. And they refused to give it to you? A. I think—I don't remember what the conversation was, but I don't believe they maintained a record of these checks. I don't recall that.

Q. Did you go to Metals Distintegrating and examine their books? A. Yes, I did.

Q. Where did you go, to Elizabeth or did you go to Verona? A. I believe it was Verona.

Q. And you examined the checks at Verona? A. Yes, we examined the purchases—the purchase orders received by—that is, the sales orders received by Metals Disintegrating. I beg your pardon, the purchase orders placed by Metals Disintegrating. 1227

Q. With Daisart? A. With Daisart, yes.

Q. And did you examine all of them that they gave you? A. Yes, I did.

Q. Did you check their books? A. I think we did. I don't recall, but I believe we did.

Q. Did you make any record of it in your report? A. None at all.

1228 Q. Did you make any record of how many completed bags were delivered by Daisart? A. No, I don't think so.

Q. You went there for the purpose of seeing whether or not they had received completed products? A. No, we went there for the purpose of obtaining the orders placed by Metals Disintegrating primarily.

Q. Did you go there for the purpose of determining whether those orders were filled? A. No.

Q. Look, Mr. Berman, you were trying to trace goods that were purchased by Daisart, is that right? A. That's right.

1229 Q. You were trying to find out if the goods were used for the purpose for which it was intended? A. That's right.

Q. Whether orders were placed by Metals Disintegrating or not, your purpose in going on this investigation was to determine whether those orders had been filled and how much of that goods had been used by Daisart on behalf of Metals Disintegrating, correct? A. Correct.

Q. The best way—and I am not an accountant, correct me if I am wrong—wouldn't the best way to have found out what was delivered by Daisart to Metals Disintegrating be to examine their books and see what they paid for

1230 it? A. I believe we got that information.

Q. Have you anything in your report about it? A. I don't know. I don't believe so.

Q. You know you haven't, don't you? A. I don't know, frankly.

The Court: Let the witness look at the report again.

(Witness examines paper.)

The Witness: There is nothing in the report to that effect. 1231

Q. What happened when you went to Verona? You went in and said, "Let's see your orders to Daisart;" isn't that right? A. We asked for the orders that the Metals Disintegrating placed with Daisart.

Q. And they gave you the orders? A. As a matter of fact, I believe they gave us copies of the orders, that's right.

Q. Copies of the orders? A. That's right.

Q. You did not see the original orders? You didn't see the books or the records in the books, did you? A. I don't recall that. The original orders would be with Daisart: We saw a copy of them. 1232

Q. And you didn't see records in the books of shipments received by Metals? A. I don't believe we looked for that. I don't remember.

Q. How long were you in Verona, in the plant at Verona? A. Not very long. About three or four hours.

Q. Were you ever in Elizabeth, New Jersey, in your life? A. I believe I was.

Q. How long ago? A. I don't recall.

Q. You weren't in Elizabeth in connection with this matter, were you? A. I don't recall. 1233

Q. Did you visit more than one place in connection with this matter, more than two places; Smith's place and Verona? A. I think we went to the banks, too.

Q. And the banks? A. Yes.

Q. You know that Metals Disintegrating has its place of business at Elizabeth, New Jersey, the main office, the main factory? A. I don't recall.

1234 Q. Did you ever visit St. Louis, Missouri, in connection with this matter? A. No.

Mr Hart: I think I have nothing else. Thank you very much.

Redirect Examination by Mr. Rudykoff:

Q. You visited a place where you saw records of Metals Disintegrating Company, is that correct? A. Yes.

Q. And were you in the company of anyone? A. Mr. Lindek.

1235 Q. And whom did you see, if you recall, at Metals Disintegrating Company? A. I don't recall the gentleman's name.

Q. What was his title? A. I think he was the purchasing agent for the company.

Q. Were the records of the company made available to you? A. Yes, they were.

Q. Subsequently did you get some copies? A. Yes.

Q. You have mentioned something about a Fidelity Union Trust Company account. Did you see any checkbook relating to that account? A. No.

1236 Q. At the Daisart office? A. No, I did not.

Q. Did you ascertain that there was an account at the Fidelity Union Trust Company in the name of Daisart Sportswear? A. Yes.

Q. Did you ask whether they kept photostats of the checks—

Mr. Hart: If the Court please, I object to the attorney leading. He might ask him what he asked them for, but to tell him, I think, is leading.

The Court: Yes.

Q. Tell us what you asked for at the time you went there. A. We asked for a transcript of the account and also whether we could get photostatic copies of the cancelled vouchers. We did get copies of the bank statements but we did not get copies of the checks. 1237

Q. With regard to the books of the company, did you see anything in the books and records produced at the time you saw Mr. Smith which indicated there was such an account in the Fidelity Union Trust Company? A. No, other than that endorsement.

Q. And that account at the Fidelity Union Trust Company, was it a substantial or a moderate account? A. I believe it was a substantial account. 1238

Q. You have given us a total with regard to 35 checks somewheres in the neighborhood of $280,000, is that correct? A. Yes.

Q. And those were checks which covered a period from February to July, 1945? A. February to May, I think it was.

Q. Somewheres about three months? A. That's right.

Q. You gave us a figure of sales which covered from January, 1944, to August, 1945? A. August of 1945, yes.

Q. And it was something in the neighborhood of $270,000, is that right? A. $275,000. 1239

Mr. Hart: I object to the question. That is not based upon the facts. There were four months missing there.

Mr. Rudykoff: Just a moment. We will get to that.

Mr. Hart: Well, I object to this. It is not based upon the evidence.

The Court: The witness can correct it if it is not a fact. The objection is overruled.

1240 Q. That was true except for four months as to which you did not get any records? A. That is right.

Q. So that as compared with 35 checks during the period of three months, they were about equal to the sales from January, 1944, to August, 1945, with the exception of four months? A. That's right.

Q. Were there any other persons assigned to the case at the War Production Board? A. I don't know. I can't answer that. I do know this: that before the completion of this case I was transferred to another bureau.

1241 Mr. Hart: I did not get that.

The Court: He said that before the completion of the case he was transferred to another bureau.

The Witness: Another federal bureau, and I turned the case back to my supervisor. That is the last I know about it.

Q. How long were you identified with the case approximately? A. Well, from the first visit in August until I believe it was about November 23rd, when I was transferred.

Q. Would that be the same year, 1945? A. 1945, yes.

1242 Q. Approximately four months? A. That's right.

Q. What happened before or after that time you do not know, is that right? A. No, I do not.

Mr. Rudykoff: That is all.

The Court: Any further questions?

Recross Examination by Mr. Hart:

Q. Do you recall specifically the facts with respect to these 35 checks? You examined, did you not, the check

book from January 1, 1944, to August of 1945, is that correct? A. I don't recall examining the check book for that period. I may have. I don't have the record of what check books I examined. 1243

Q. But, at any rate, you did pick out all of the checks used by Daisart in those check accounts for purchases? A. For purchases of piecegoods?

Q. Yes. A. Yes.

Q. And those checks you picked out for a period of at least from January 1, 1945, until August, 1945, is that correct? A. That is correct, those available to me. As I say, I don't recall whether they were all available. 1244

Q. Well, you had the stubs there, didn't you? A. Yes, but I don't recall whether I had them all.

The Court: Did you check the cancelled vouchers against the checkbook?

The Witness: The ones that I had, yes.

The Court: And were there any missing?

The Witness: I think there were some ones missing.

Q. Did you make any record of any months missing? A. No. 1245

Q. And if there were months missing it was your duty to make a record of it? A. Yes.

Q. So that if there is no record of it, what is your recollection now? A. The same as before: I don't remember.

Q. You don't remember? A. That's right.

Q. You have no reason to believe that there were some missing or that there weren't some missing, is that right? A. That's right.

1246 Q. If there were some missing you would have put it in your report as a good Government agent, wouldn't you? A. I presume so.

Q. Now, when you went to Steinam and these other concerns you did not find any payments made by Smith in cash, did you? A. I couldn't tell how the payments were made.

Q. I mean, the payments corresponded with the checks that you got? A. The payments corresponded to the invoices submitted.

Q. And when you went to these sellers of the merchan-
1247 dise from whom Daisart bought his merchandise, you found that they were real, legitimate concerns? A. Yes.

Q. They weren't fictitious persons? A. No.

Q. They weren't fictitious amounts? A. No, that's right.

Q. Did you find any checks there for the purchase of merchandise made out to anybody that you could not locate? A. I don't recall that.

Q. I mean, you didn't find any fictitious persons from whom Smith supposedly bought merchandise whom you could not afterwards locate? A. I don't recall that there was such a case.

Q. Everybody whom you visited was a person or a firm
1248 legitimately? A. Yes.

Q. And Smith had it specifically on his books as purchases and checks made out to these concerns? A. That is correct.

Redirect Examination by Mr. Rudykoff:

Q. With regard to the examination you made of the various firms from which these goods were bought, did you ever make a tabulation of the total purchases made by Daisart? A. No, I did not.

Q. Can you tell us now with regard to the $281,000 whether it was more than that amount? A. Whether it was more than that amount? 1249

Mr. Hart: I didn't get that question.

The Court: He wanted to know whether the total purchases made by Daisart was more than $281,000.

Mr. Hart: I object to that on the ground that it is not the best evidence, and I object to it on the ground that there is no basis for it in his report.

The Court: From his examination he may state what he found. 1250

Q. Was it more than $281,000? A. Yes, substantially more.

Mr. Rudykoff: That is all.

Recross Examination by Mr. Hart:

Q. Mr. Berman, what do you base that on, your recollection? A. My recollection of obtaining the duplicate copies of the invoices from the suppliers.

Q. Is there anything in this report— A. No.

Q. (Continuing) —which shows that? A. No. 1251

Q. Did you make out a report after you completed your investigation? A. No. The report—this was an interim report.

Q. Did you make a final report? A. I wasn't able to.

Q. Did you ever commit in writing any statement to the effect that the purchases were more than you found? A. I did not.

Mr. Hart: I guess that is all.

1252 The Court: All right.

Mr. Rudykoff: Thank you, Mr. Berman.

(Witness excused.)

DAVID GUTSTEIN, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

Q. With what firm are you connected? A. Cindy Frocks.

1253 Q. What business is Cindy Frocks engaged in? A. Dress manufacturing.

Q. How long have you been in the dress-manufacturing business? A. Six years.

Q. How long has Cindy Frocks, Inc. been in existence? A. For six years.

Q. What is your connection with it? A. Vice President.

Q. In that capacity did you make certain purchases of piece goods from Daisart Sportswear? A. I did.

Q. And in that connection who did you see? A. I saw Mr. Smith.

1254 Q. Where did you see him? A. At Central Avenue in Newark.

Mr. Rudykoff: Will your Honor indulge me a minute?

The Court: Yes, take your time.

Mr. Rudykoff: I must ask the Court for one of two things: a short recess or else withdraw the witness.

The Court: If it is not too inconvenient to you, I would prefer to give you a short recess, because

I do not want to bring this witness back if it is possible to be avoided. 1255

Mr. Rudykoff: In the meantime

The Court: If it is possible. I thought we could complete with him. What would you suggest?

Mr. Rudykoff: Is your Honor suggesting a five minute recess?

The Court: Yes, I am suggesting it.

Mr. Hart: I second the motion.

(A short recess was thereupon taken.)

1256

Mr. Rudykoff: I want to thank your Honor for the indulgence.

Does your Honor want to dispose of this matter at this time?

The Court: Mr. Hart and Mr. Siegel, I have examined this report. I feel that the first page and the last page are prejudicial to the defendants, and it might be prejudicial to the defendants. In other words, they contain statements which are in the nature of conclusions, as you pointed out, and I believe I will not offer that report in evidence as I intended. 1257

Mr. Hart: May I suggest that it be marked for identification?

The Court: It has been marked for identification.

Mr. Hart: I think that will do.

Mr. Rudykoff: Well, can we leave it with this understanding: that we may read from it such portions as we believe are necessary for our respective cases with the exception of the first sheet and the last sheet?

1258 The Court: If you will offer it in evidence I will receive the report with the exception of the first sheet and last sheet which must be detached.

Mr. Hart: May I suggest this, if the Court please: that we may refer to such portions of it as were referred to in our questioning of this witness?

The Court: I think that if you are going to refer to it, you should refer to the whole report. What I suggest, Mr. Rudykoff, is this: you can have photostats made of that report, can you not?

Mr. Rudykoff: Yes, I could.

1259 The Court: Excluding the first and last pages.

Mr. Rudykoff: Surely.

The Court: I suggest that you do that and then I will receive that in evidence excluding the first and the last page.

Mr. Rudykoff: Very well, sir.

Mr. Hart: Your Honor, I like the first page very much—I mean, the bottom of it anyway.

The Court: Do you consent to the reception of the entire report in evidence?

Mr. Hart: No, I do not, your Honor.

The Court: Then apparently you do not like it.

1260 Mr. Hart: I object to the reception of any part of this because it is a statement made, it is a memorandum or a report made by somebody who is here to testify to the facts.

The Court: And he has read from parts of it.

Mr. Hart: And he has read from parts of it, and I think those parts are in evidence.

The Court: I think it is competent evidence with the exception of the first and the last pages.

Mr. Hart: May I direct your Honor's attention

I know the first part that your Honor has in mind. 1261

(Conference at bench outside of the hearing of the jury and outside of the hearing of the reporter.)

The Court: Will you have this photostated?

Mr. Rudykoff: Surely.

Mr. Hart: Will your Honor reserve your ruling until it is photostated?

The Court: Yes. Let us proceed with this witness and let the jurors get home.

1262

DAVID GUTSTEIN, resumed.

Direct Examination by Mr. Rudykoff (Continued):

Q. I think you have already stated, Mr. Gutstein—I am not sure—that you saw someone at the plant of Daisart Sportswear, Inc.? A. I did.

Q. And who did you see? A. I saw Mr. Smith.

Q. Do you see Mr. Smith in court? A. I do.

Q. Who is he? A. He is the second gentleman on the table on my left.

1263

Q. Where did you go, to what address? A. It was in Central Avenue, Newark, New Jersey.

Q. And what kind of a place was it? A. It was about a three-story building, one flight up; a sort of a little factory with machinery, a regular sewing machine plant.

Q. Did you have some talk about purchasing some finished piece goods? A. I did.

Q. And did you see finished piece goods? A. I saw what you would call finished white bleached piece goods, there.

Q. Where did you see it? A. At this particular plant.

1264 Q. At 99 Central Avenue? A. Yes, I believe that is the address, 99 Central Avenue.

Q. And did you see any other piece goods elsewhere? A. Yes, I saw some piece goods—Mr. Smith took me down to a little store, a sort of a little warehouse, I believe it was, across the street from this particular factory, and I saw some of the goods that I purchased there.

Q. And was the store locked? A. Yes.

Q. Did Mr. Smith open it? A. He did. I believe that he opened it.

Q. Do you recall—

1265

Mr. Hart: If the Court please, I suggest the witness start testifying instead of Mr. Rudykoff. I object to the question as leading: Was the store locked? Did Mr. Smith open it?

The Court: Try not to lead.

Mr. Rudykoff: I will be glad to.

By Mr. Rudykoff:

Q. What time of the day was it with regard to whether it was light or dark? A. Oh, it was the light part of the

1266 day.

Q. When you entered the store, what was the condition of it with regard to lights—was it light or dark? A. It was fairly light.

Q. What did you see in the store? A. Well, I saw some bales of piece goods.

Q. How large was the store? A. Oh, I would say the store was about twenty feet wide by about thirty or forty feet deep, or thereabouts.

Q. And where was the piece goods placed? A. On the floor.

Q. And with regard to wrapping, was it wrapped or unwrapped? A. Some were wrapped and some were unwrapped. 1267

Q. Did you make a selection? A. I did.

Q. And did you buy some goods? A. I did.

Mr. Hart: If the Court please, if Mr. Rudykoff wants to testify I submit that he take the witness stand.

The Court: Did you buy some goods?

Mr. Hart: The question is, what did he do there, instead of Mr. Rudykoff. 1268

By Mr. Rudykoff:

Q. Tell us what happened after you and Mr. Smith went to this store. A. After Mr. Smith and I went to the store I saw the piece goods he had in his premises, in the shop, and some of it over there in this little store, and we agreed on a price, and he asked me a certain price, and we agreed, and I bought some of the goods.

Q. I show you Government's Exhibit 89 for Identification and I ask you if the invoice was received by you in connection with a purchase made at Daisart Sportswear (handing)? A. (Examining) Yes. 1269

Q. And did you issue a check? A. I did.

Q. In payment of that invoice? A. That is correct.

Q. And is the check attached to it the check in payment of the invoice? A. That is correct.

Mr. Rudykoff: I offer the invoice and check, Government's Exhibit 89 for Identification, in evidence.

(Exhibit is handed to Mr. Hart.)

1270 Q. While we are waiting, what kind of goods was covered by these particular invoices? A. It was print cloth.

Q. What was the agreed price? A. I believe it was around 27 cents. I think 25 or 27 cents. I am not certain.

Q. I show you Government's Exhibit 87 for Identification, and I ask you if that represents an invoice and a check relating to another transaction involving the purchase of piece goods from Daisart Sportswear, Inc. (handing)? A. (Examining) It does.

Q. And what kind of material was involved there? A. It is a print cloth.

1271 Q. Is that the same material that was involved in the other purchase? A. Yes, about the same.

Mr. Rudykoff: I offer in evidence Government's Exhibit 87 for Identification.

Mr. Hart: I have no objection to 89.

The Court: Received in evidence.

Mr. Siegel: I object on behalf of the defendant Deeb.

The Court: Received in evidence subject to your right to make a motion at the close of the case.

1272 (Government's Exhibit 89 for Identification was received in evidence and marked Government's Exhibit 89.)

By Mr. Rudykoff:

Q. With regard to Exhibit 89 in evidence, the price was how much per yard? A. 27 cents.

Q. And did the invoice indicate the bale numbers involved? A. They did.

David Gutstein—for Government—Direct

Q. Do you see a bale number marked 21490? A. I do. It is a case number. 1273

Q. A case number? A. Yes.

Mr. Hart: No objection to 87.

The Court: It is received in evidence.

Mr. Siegel: Same objection on behalf of the defendant Deeb.

The Court: It is received subject to your right to make a motion at the close of the case.

(Government's Exhibit 87 for Identification was received in evidence and marked Government's Exhibit 87.) 1274

By Mr. Rudykoff:

Q. I show you an invoice which is part of Exhibit 27 in evidence, and ask you if you see the equivalent case number? A. Yes.

Q. Do you see it? A. I do.

Q. And that is No. 21490? A. 21490.

Q. What price per yard is indicated? A. That is 16424.

Q. About sixteen and one-half cents a yard? A. That is right. 1275

Q. And you paid 27 cents, is that correct? A. That is correct.

Q. With regard to Exhibit 87 in evidence, the price you paid was at 25 cents a yard, is that correct? A. 25 cents.

Q. And the amount of yardage involved was how many? A. 17,118 yards.

Q. And the number of rolls indicated in your transaction? A. Yes.

1276 Q. How many? A. 37. No, that is 37 inches, 17 rolls.
Q. I show you part of Government's Exhibit 26. Does that describe 17 rolls? A. Yes.

Mr. Hart: I object to it, if the Court please. The exhibit speaks for itself.

The Court: I think it does, but for the purpose of assisting the jury I will permit the question.

By Mr. Rudykoff:

1277 Q. And is the yardage there identical to the yardages which were involved in your transaction? A. 17,158, that is correct.
Q. In both cases? A. In both cases.
Q. What is the price per yard indicated on Government's Exhibit 26? A. About 12 cents—11850.
Q. And you paid how much? A. I paid 25.

The Court: What is the price shown on Exhibit 27?

Mr. Rudykoff: 11850—approximately 12 cents.

By Mr. Rudykoff:

1278 Q. Did you see anyone at the place of business besides Mr. Smith? A. A girl in the office—it was a bookkeeper, I believe, or a stenographer.

Mr. Rudykoff: You may inquire.

Cross-examination by Mr. Hart:

Q. How did you happen to come over to Jersey to Mr. Smith? Who did you speak to before you came over? A. I called Mr. Smith on the telephone.

Q. Before you called Mr. Smith, whom had you spoken to? A. I don't recall who I had spoken to, but his phone number was given to me by one of the salesmen. I believe it was the dress salesmen. 1279

Q. Will you tell us what date it was?

The Court: A dress salesman from some dress manufacturing company?

The Witness: From some dress buyer's office. They told me—

Mr. Hart: I object to what they told him, if the Court please.

The Witness (continuing): —to call up this particular number. 1280

The Court: You got it from some dress buyer?

The Witness: From some dress buyer.

By Mr. Hart:

Q. When did you go over there? A. Where?

Q. When did you go over to Smith's place in Jersey? A. Oh, it was sometime in 1945.

Q. Well, what month? A. I think it was July.

Q. Was it on the date that you purchased it or the date that you made out your check? A. Yes. 1281

Q. Do you recall when the WPB went out of existence? A. No, I don't.

Q. You know that was in September, 1945? A. I really don't know.

The Court: Suppose we have that ascertained. That is a matter of which we can take judicial notice. What was the date it went out?

1282 Mr. Rudykoff: The War Production Board was June 30, 1946, if I recall correctly.

The Court: June 30, 1946?

Mr. Rudykoff: As far as the OPA, it went out of existence much later. I think perhaps the relevant question would be the OPA rather than WPB.

Mr. Hart: The OPA was transferred when, September?

Mr. Rudykoff: Transferred to where?

Mr. Hart: To another Government agency. Was it September 30, 1945?

1283 Mr. Rudykoff: I can verify that.

The Court: We will have that stipulated and the jury will be informed of it. I will inform the jurors.

By Mr. Hart:

Q. I ask you to look at your checks and at these bills and tell us whether you want to change your answer that it was in June of 1945 that you purchased this material (handing). A. (Examining) It was October.

Q. It was October of 1945, is that correct? A. Yes.

1284 Q. What date in October? A. Well, on—here it is, October 11th. The other one is on October 13th.

Q. 1945? A. 1945, that is correct.

Q. You went over and you offered your check; you asked for a bill. Mr. Smith accepted your check and gave you a bill, is that correct? A. That is right.

Q. You know at that time that that was after V-J Day and the war was over then? A. I think it was.

Q. And Mr. Smith's plant was not operating? A. It 1285
was not operating.

Q. It was not operating? A. Yes.

Q. He told you he was closing up? A. That is correct.

Q. That he had no more orders? A. That's right.

Q. And that he had these goods left over? A. That is correct.

Mr. Hart: That is all.

The Court: Any other questions?

Mr. Hart: Just one minute.

1286

By Mr. Hart:

Q. In figuring the purchase price did Mr. Smith inform you that he had to add on the freight and cartage and the commission to the person who recommended you? A. I think there was some discussion with reference to that.

Q. In other words, the price paid by him plus freight and cartage and the commission to the party who had recommended you? A. There was some discussion along those lines, the freight and expenses.

Mr. Hart: All right, that is all. Thank you. 1287

(Witness excused.)

The Court: The jury is excused until tomorrow morning at 10 A.M. Is that convenient for everybody? 10:30 A.M. tomorrow morning. The same admonition I gave you still holds.

(At 5:10 P.M. an adjournment was taken to November 21, 1947, at 10:00 o'clock A.M.)

1288 New York, November 25, 1947;
10:00 o'clock A. M.

Trial resumed.

RAYMOND HALPERN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

1289 Q. Mr. Halpern, will you please keep your voice up so that all the jurors can hear you? A. Yes.

Q. Are you connected with Raymodes Negligees? A. Yes, sir.

Q. And in what connection? A. President.

Q. And where is it located? A. 105 Madison Avenue, New York City.

Q. What kind of business do they do? A. We are manufacturers of housecoats and negligees.

Q. How long have you been in that business? A. About twelve years.

Q. Are you also connected in some way with Ray Robes?

1290 A. Yes.

Q. And what is the address of Ray Robes? A. 38 East 29th Street.

Q. What is your connection with that concern? A. President.

Q. I direct your attention to Government's Exhibit 91 for Identification, as well as 91-A for Identification, and ask you with whom you had dealings relating to those particular documents? A. Albert J. Deeb.

Q. Do you know Mr. Deeb? A. Yes.

Q. Do you see him in court? A. Yes. 1291

Q. Will you point to him? A. The gentleman sitting on the extreme end.

Mr. Rudykoff: Indicating the defendant Deeb.

Q. Were these documents kept by you in the regular course of your business? A. Yes, they were.

Mr. Rudykoff: I offer them in evidence.

Mr. Hart: May I see them?

(Papers are handed to Mr. Hart.) 1292

Mr. Rudykoff: May I proceed?

The Court: Yes, unless an objection is made.

Mr. Siegel: I would like to look at the exhibits.

The Court: Would you want him to withhold examination while you look at them?

Mr. Siegel: Yes, sir.

The Court: All right. How do you spell Raymodes?

The Witness: R-a-y-m-o-d-e-s, and R-a-y R-o-b-e-s. 1293

By Mr. Rudykoff:

Q. Are those two separate words? A. Ray Robes is two separate words.

Q. And Raymodes is one word? A. One word.

The Court: Have you examined them, counsel?

Mr. Siegel: I have examined this one.

The Court: Which one are you referring to?

Mr. Siegel: Exhibit 91.

1294 Mr. Rudykoff: 91A and 91.

The Court: Both exhibits are offered in evidence. Have you any objection?

Mr. Hart: I do object on the ground that there is no basis for its introduction as to the defendants Daisart or Smith.

Mr. Siegel: I will object to the introduction of this exhibit on behalf of the defendant Deeb unless it is connected.

The Court: The objection is overruled. They will be received in evidence.

1295 (Government's Exhibits 91 and 91A for Identification were received in evidence and marked Government's Exhibits 91 and 91A respectively.)

By Mr. Rudykoff:

Q. What kind of material was involved in the last described transactions? A. I would like to look at those. Rayon Fabries, I guess.

1296 (Exhibits are handed to the witness.)

A. It looks like a rayon twill. It is so long ago and we buy so much goods.

Q. What did you do with the material? A. We manufactured them into housecoats and negligees.

Q. In the form in which it was received? A. Yes, surely.

Mr. Rudykoff: May I at this time read the exhibit?

The Court: Yes.

Mr. Rudykoff: This is Exhibit 91 in evidence, on the stationery which is imprinted with the name Albert J. Deeb, merchandise broker, 220 Fifth Avenue, New York. April 16, 194— the exact year is not filled in. Raymodes Negligees. Terms, net 10. 105 Madison Avenue, N. Y. C.

One lot, 63 rolls, extra width twill, 34,842 yards, at 75 cents per yard, $26,131.50, less deposit $13,000., net $13,131.50.

The Court: That was for, 34,842 yards?

Mr. Rudykoff: Yes.

The Court: At how much a yard?

Mr. Rudykoff: At 75 cents per yard.

Mr. Hart: What is the date of those?

Mr. Rudykoff: April 16, 194— the year is not inserted, but the check is dated 1945.

The check is a check which bears the imprint of Raymodes Negligees, Inc., 105 Madison Avenue, New York, April 16, 1945. Pay to the order of Albert J. Deeb, $13,131.50; which is the balance indicated on the invoice signed by Raymodes Negligees, Inc., Raymond Halpern, President, Joseph Ash, Treasurer, and endorsed by Albert J. Deeb in writing.

Underneath is a stamp, for deposit in Royal Industrial Bank, Philip Paver.

By Mr. Rudykoff:

Q. Were there any terms in connection with this transaction which is described in Exhibit 91? A. Were there any what?

1300 Q. Were there any terms involved? Was there any extension of credit? A. Yes. No, the only thing we paid a deposit on some of the goods, and we were to pay upon receipt and upon examination of the material, which is usually a period of ten days, examine the goods and then pay for them.

Q. And is that what happened? A. Yes, sir.

Q. Will you examine Exhibit 90 for identification, please (handing)?

(Witness examines exhibit.)

1301 Q. Do you recall with whom you had the transaction or the transactions, I should say, which are described in the Exhibit marked 90 for Identification? A. Well, I would say Mr. Deeb was the agent that showed the materials that we bought.

Mr. Siegel: I object to that and move to strike it out as not responsive: with whom did he have the transaction.

The Court: The motion is granted.

With whom did you have these dealings concerning that transaction?

1302 The Witness: Mr. Deeb.

By Mr. Rudykoff:

Q. Did you see him? A. Yes.

Q. Did you speak to him? A. Yes.

Q. And as a result of what you said, were these transactions consummated? A. Yes.

Q. Now, there were certain checks issued in connection

with that transaction or series of transactions, is that correct? A. Yes, surely. 1303

Q. I show you Exhibit 92 for Identification—if you wish to, you may compare it with Exhibit 90 for Identification—and ask you if those represent checks in connection with Exhibit 90 for Identification (handing)? A. (Examining) Yes, they look like the checks that were in payment for these invoices.

Q. Who received those checks? A. Well, Mr. Deeb received some. At other times some other person would come up for them. Who they are, I don't know. I believe some of them would have been mailed. 1304

Mr. Rudykoff: I offer Exhibit 90 for Identification and Exhibit 92 for Identification in evidence.

Mr. Hart: On behalf of the defendants Smith and Daisart, I object to their introduction in evidence and receipt in evidence upon the ground that they are not in any manner, shape or form connected with either Daisart or Smith.

The Court: The objection is overruled.

Mr. Siegel: If your Honor please, I will object to the introduction of these exhibits on behalf of the defendant Deeb upon the ground that they are not binding upon him, particularly as a part of the exhibit I notice a bill made out to a Mr. Fox, and I further notice checks made out to a Mr. Fox. Certainly those exhibits are not binding upon this defendant, Mr. Deeb. 1305

The Court: The objection is overruled.

Mr. Siegel: Exception.

The Court: There has been mention here of a man by the name of Fox before in this case.

1306 Mr. Siegel: There was some testimony by one of the previous witnesses, Judge, that he did some business with a Mr. Fox, and here we are introducing the same as if we had bills made out to a Mr. Jones or a Mr. Smith.

The Court: The exhibit is received, and the objection is noted.

(Government's Exhibits 90 and 92 for identification were received in evidence and marked Government's Exhibits 90 and 92 in evidence.)

1307 Mr. Rudykoff: May I read these exhibits to the jury at this point?

The Court: Yes.

Mr. Rudykoff: Exhibit 90 for identification, or rather Exhibit 90 in evidence, the first document is a bill, or invoice, rather, on the stationery of Albert J. Deeb, 220 Fifth Avenue, July 30, 1945:

Raymodes Negligees, Inc. Extra special rayon crepe, listing various numbers of bills and various yardages—total 5,841 at 80 cents a yard, total $4,672.80.

1308 The first item on the Government Exhibit 92 is a check on Raymodes Negligees, Inc, account, dated July 30, 1945, payable to Albert J. Deeb, for the amount of the invoice, $4,672.80.

The endorsement is Albert J. Deeb, stamped "Pay to the order of any bank or trust company. All prior endorsements guaranteed. August 1, 1945. The National Bank of Windham."

The second document in Government's Exhibit 90 is an invoice dated July 27, 1945, on the stationery

of L. A. Fox, piece goods, 1133 Broadway, Room 505, New York, July 27, 1945, addressed to Raymodes Negligees, Inc. 1309

One lot special heavy crepe, various listings of case numbers and yardages, total 6,933 3/4 yards at 80 cents a yard, total $5,547.

In Government's Exhibit 92, the second check is one dated July 30, 1945, drawn by Raymodes, payable to L. A. Fox for the amount of that invoice, $5,547, endorsed, "L. A. Fox," and underneath, "Geo. Smith."

The Court: What bank was that deposited in? Does that appear? 1310

Mr. Rudykoff: Yes, that was deposited in the Fidelity Union Trust Company, Newark, New Jersey, under date of August 9, 1945.

The third item in Government's Exhibit 90 is an invoice which is dated July 30, 1945, on the stationery of L. A. Fox, addressed to Raymodes, describing one lot of special heavy weight crepe, various case numbers and yardages, totaling 7,074 3/4 yards at 80 cents a yard, total amount $5,659.80.

Back to Government Exhibit 92, the third item is a check by Raymodes, dated July 30, 1945, payable to L. A. Fox in the amount of $5,659.80; endorsed by L. A. Fox, and underneath "Geo. Smith," and deposited August 9, 1945, Fidelity Union Trust Company, Newark, New Jersey. 1311

The fourth item in Government Exhibit 90 is an invoice on the stationery of Albert J. Degh, dated August 6, 1945, addressed to Raymodes Negligees, describing one lot of special rayon, 5,540 yards at 80 cents, total $4,432, the following which is a list

The Court: Yes.

1324 Mr. Siegel: May I at this time in behalf of the defendant Deeb, in view of the notations made on the photostats, ask the Government to produce the originals which do not contain such notations. We only use photostats if we do not have the originals. Does the Government have the originals?

The Court: I have ruled that the notations are simply put on there to assist the jury in relating one exhibit to another and they are competent for that purpose. The objections are overruled.

1325 Mr. Siegel: I now move—rather, I now object—are you offering them in evidence now?

Mr. Rudykoff: Yes, I will offer 93 for Identification and 95 for Identification.

Mr. Siegel: I object to the introduction of these instruments into evidence on behalf of the defendant Deeb in that all of these exhibits here bear the names of other persons and do not contain the name of Mr. Deeb at all. I contend they are not binding upon the defendant Deeb and they cannot be in any way connected with the defendant Deeb.

The Court: That is a matter for the jury to determine by the testimony. The objection is overruled.

1326 Mr. Siegel: Exception.

(Government's Exhibit 93 for Identification and Government's Exhibit 95 for Identification were received in evidence and marked Government's Exhibits 93 and 95 respectively.)

Mr. Rudykoff: May I read Exhibit 93, if the Court please?

The Court: Yes.

Mr. Rudykoff: Item 1 of Government's Exhibit 33 is an invoice of George A. Howard dated June 5, 1945 to Ray Robes Company, 38 East 29th Street, 1057.19 7/8 yards, special width rayon cap at 80 cents a yard, total $8,575.90; 353 yards printed crepe at 85 cents a yard, $300.05, total $8,875.95. 1327

Item 2 is on the stationery of L. A. Fox, July 12, 1945, to Ray Robes, one lot special heavy crepe, three cartons, 5,863 3/4 yards at 80 cents, a total $4,691, less deposit, $1,000, net $3,691.

Item 3 on the same exhibit, invoice of L. A. Fox, July 12, 1945, Ray Robes Company, one lot special heavy weight crepe, 4 cartons, 6,700 yards at 80 cents, total $5,360, less $1000 deposit, net $4,360. 1328

The next item on the same exhibit, L. A. Fox, July 13, 1945, to Ray Robes, one lot special heavy crepe, 3 cartons, 5,670 1/2 yards at 80 cents, total $4,536.40, less deposit $1000, net $3,536.40.

The next item, L. A. Fox, invoice dated July 13, 1945, to Ray Robes, one lot special heavy weight crepe, 3 cartons, 5,282 yards at 80 cents, total $4,225.60, less deposit $1000, net $3,225.60.

The next item is invoice of L. A. Fox, dated July 14, 1945, addressed to Ray Robes, one lot special heavy weight crepe, 5,137 3/8 yards at 80 cents, $4,110.10, less deposit of $1500, net $2,610.10. 1329

The following item of the same exhibit, invoice of L. A. Fox, July 16, 1945, to Ray Robes, one lot special heavy weight crepe, 3 cartons, 5,442 yards, at 80 cents, $4,353.50, less deposit of $1500, net $2,853.60.

The next item is, invoice of L. A. Fox dated July 27, 1945, addressed to Ray Robes, describing one

lot special heavy weight crepe, total yardage 5,280
1330 yards at 80 cents, total $6,624.

The next item is Exhibit 95 in evidence, which is a check of Ray Robes, dated July 19, 1945, payable to L. A. Fox, $2,853.60, which is endorsed L. A. Fox, and then the stamp reading as follows: "Pay to the order of Fidelity Union Trust Company, Newark, New Jersey, Daisart Sportswear, Inc."

The next item on the same exhibit is a check of Ray Robes, dated July 19, 1945, payable to L. A. Fox, $2,610.10, endorsed L. A. Fox with the stamp of Daisart Sportswear, Inc., deposited in Fidelity
1331 Union Trust Company, Newark, New Jersey.

The next item on the same exhibit is a check of Ray Robes, dated July 17, 1945, payable to L. A. Fox, in the amount of $3,225.60, endorsed L. A. Fox, underneath that, George Smith, deposited Fidelity Union Trust Company, Newark, New Jersey.

The next item on the same exhibit is a check of Ray Robes, dated July 17, 1945, payable to L. A. Fox, in the amount of $3,536.40, endorsed L. A. Fox, stamped endorsement: "For deposit in Royal Industrial Bank, Philip Paver."

1332 The next item on the same exhibit is Ray Robes' check, dated July 17, 1945, payable to L. A. Fox, in the amount of $4,360., endorsed L. A. Fox, George Smith, deposited Fidelity Union Trust Company, Newark, New Jersey.

By Mr. Rudykoff:

Q. Mr. Halpern, I direct your attention to Exhibit 94 for Identification. Will you please examine those docu

ments and will you please tell us with whom you dealt in connection with those transactions? A. Mr. Deeb. 1333

Q. Now, will you please examine the checks and tell us if they are related to those transactions? A. Of coarse, Mr. Deeb was not always alone. There were other people with him.

The Court: Who were the other people, do you know?

The Witness: I don't know. They represented him or they would come for the checks or they would show the material together, but I mean he was occasionally alone, but not all the time. 1334

The Court: Did you ever meet a George Smith, the defendant George Smith?

The Witness: No, sir, I never heard his name until recently when Mr. Rudykoff called me down.

By Mr. Rudykoff:

Q. Have you made the examination, Mr. Halpern? A. Yes.

Q. Can you state whether those checks relate to the transactions which are covered by Exhibit 94 for Identification? A. They do. 1335

Mr. Rudykoff: Would you mark those as one exhibit, please?

(Documents marked Government's Exhibit 96 for Identification.)

ard," with a further endorsement, "Barney Levine,
1348 deposited Royal Industrial Bank."

The next item is a check dated May 2, 1943, of Ray Robes, payable to George A. Howard, in the amount of $5,162., endorsed George A. Howard, deposit to the account of Daisart Sportswear, Inc. Fidelity Union Trust Company.

The next item is a check of Ray Robes, dated May 2, 1945, payable to George A. Howard, in the amount of $4,536.71, endorsed George A. Howard, deposit to the account of Daisart Sportswear, Inc., Fidelity Union Trust Company.

1349 You may inquire.

Cross Examination by Mr. Siegel:

Q. Mr. Halpern, when for the first time did you meet Mr. Deeb if you can recall? A. Well, it is hard to say. It must have been back in about 1944 or 1945, when the purchases were made.

Q. Was that in about April or May or the spring of that year? A. I couldn't recall.

Q. Do you remember whether it was in the early part or the middle part of the year or the latter part of the year.

1350 A. I would say it was in the early part or the spring.

Q. The spring of 1945? A. 1945, yes.

Q. That was after VE Day, was it not? I mean, after the war in Continental Europe? A. Yes.

Q. You recall when we had VJ Day, don't you, that was about in August of 1945? A. That was August, 1945.

Q. And do you remember who introduced you to Mr. Deeb? A. No.

Q. Did Mr. Deeb just come in and introduce himself to

you? A. No, I think that someone sent him up. I frankly don't remember who brought him in to see me. 1351

Q. That is your best recollection of it? A. Yes.

Q. You were in great need of materials at that time, weren't you? A. Correct.

Q. And you bought the materials practically from any source where you could get it? A. That is so.

Q. And you did business with these people who are referred to as merchandise brokers? A. Yes.

Q. They would bring materials to you and if you could use the materials, you would buy them? A. Correct.

Q. You did business with many brokers besides Mr. Deeb, didn't you? A. Yes, we did. 1352

Q. And you know that Mr. Deeb at that time was what is commonly called a merchandise broker? A. Yes, I understood that.

Q. And that he would sell goods directly to you if he had the goods or he would obtain goods from other sources if he could and sell them to you? A. That's right.

Q. I saw on many invoices here the names of Mr. Fox and Mr. Howard. You dealt with them too? A. Yes.

Q. And they were also merchandise brokers? A. Yes.

Q. And I noted that many checks here were made out to a Mr. Fox and to Mr. Howard. You gave those checks to them in payment of goods that they sold to you? A. 1353 Yes, or mailed it to them.

Q. The only checks that you gave to Mr. Deeb were for merchandise that Mr. Deeb sold to you? A. I couldn't recall that. I would think that is what we did. We buy so much goods and there are so many transactions that honestly it is hard to recall what took place in 1945.

Q. Well, would you say you dealt with fifteen or twenty brokers during that period? A. At least that, or more.

1312 ing of the case numbers and the yardages involved.

The fourth item in Government's Exhibit 92 is a check by Raymodes dated August 7, 1945, payable to Albert J. Deeb in the amount of $4,432, and endorsed "For deposit Albert J. Deeb." Bank: The Mahopac National Bank, Mahopac, New York.

The Court: That first check of Exhibit No. 1, that was deposited in a bank in Windham, was it?

Mr. Rudykoff: Yes, your honor, Windham, New York—the National Bank of Windham.

1313 The next item in Government's Exhibit 90 is an invoice of Albert J. Deeb dated August 7, 1945, to Raymodes Negligees, Inc., describing one lot of rayon special width, 5,622 1/4 yards at 80 cents, total $4,498. There is a listing of case numbers and yardages.

The next item in Government's Exhibit 92 is a check of Raymodes dated August 7, 1945, payable to Albert J. Deeb in the amount of $4,498, endorsed "For deposit Albert J. Deeb", and deposited in the West Hartford Trust Company, West Hartford, Connecticut.

1314 The next item in Government's Exhibit 90 is an invoice of Albert J. Deeb, dated August 6, 1945, to Raymodes for a lot of special extra wide rayon, 3,926 1/2 yards, at 80 cents per yard, total $3,141, with a listing of two cases and yardages.

The next item in Government's Exhibit 92 is a check of Raymodes dated August 7, 1945, payable to Albert J. Deeb in that amount, $3,141, and deposited by Albert J. Deeb in the Mahopac National Bank.

By Mr. Rudykoff: 1315

Q. Now, Mr. Halpern, I show you Government's Exhibit 93 for Identification. Will you please examine those and tell us with whom you dealt in connection with the transactions described in the documents (handing)? A. (Examining) There is Mr. Deeb sitting there with the gentleman that came up to see me, but he usually had a couple of other people with him from what I recall.

Q. At any rate, he was one of the people you saw in connection with the transactions? A. Yes.

Q. Did you get the merchandise which is described in the invoices? A. Yes, I received it. 1316

Q. Did you pay for them? A. Yes, surely.

Q. Will you look at these in the meantime, and see if those are some of the checks which are in payment (handing)? A. (Examining) Yes, these are the checks.

Q. In payment? A. They are not all there.

Q. I want you to examine those checks, and tell us whether those particular checks were payments on account of the merchandise described in Government's Exhibit 93 for Identification (handing)? A. (Examining) Yes, these are the checks.

1317

Mr. Rudykoff: May I have these marked as one exhibit for identification?

(Documents marked Government's Exhibit 95 for Identification.)

Mr. Rudykoff: I offer in evidence Exhibits 93 for Identification and 95 for Identification.

Mr. Hart: There are penciled notations on the backs of these exhibits. Were they made by your office?

1318 Mr. Rudykoff: They are made mostly in my handwriting?

Mr. Hart: Of course, I—

Mr. Rudykoff: And they are not in evidence, but I will tell you—

Mr. Hart: I do not want to discuss anything that is not in evidence. You are offering these photostats?

Mr. Rudykoff: That is right.

Mr. Hart: That contain penciled notations in your handwriting?

1319 Mr. Rudykoff: That is right.

Mr. Hart: I object to the receipt of anything in Mr. Rudykoff's handwriting.

The Court: We will have those parts in Mr. Rudykoff's handwriting erased or we will substitute new photostats without the notations by you, and with that the objection is overruled, and in the meantime the penciled notations are not to be exhibited to the jury but new photostats are to be substituted—new or erased.

Mr. Rudykoff: May I approach the bench?

The Court: Yes. I don't know what the nota-

1320 tions are.

Mr. Hart: I don't know either, but they are in Mr. Rudykoff's handwriting.

(Discussion at bench between the Court and counsel not within the hearing of the jury and not within the hearing of the reporter.)

The Court: I have examined the penciled notations on the backs of these exhibits, Exhibit No. 93 for identification, and where I see the penciled nota-

tions they are merely notations which will collate this exhibit with other exhibits; and for that reason I shall change my ruling and I will receive the exhibit including the pencil notations. 1321

Mr. Hart: If the Court please, I will—

The Court: The objections are noted on the part of both counsel and the objections are overruled.

Mr. Hart: May I make this same objection with respect to any of the other invoices that may have penciled notations in Mr. Rudykoff's handwriting?

The Court: Yes.

Mr. Hart: If there are any.

The Court: Yes. 1322

Mr. Siegel: I don't know, your Honor—

The Court: These penciled notations are simply put on, as I said, to assist the jury in collating them, referring one exhibit to another.

Mr. Siegel: Providing that is proven by the Government.

Mr. Rudykoff: We will prove it.

Mr. Siegel: What are these notations on the checks here?

Mr. Rudykoff: Those refer to invoice numbers.

Mr. Siegel: I make the same objection with respect to the checks. 1323

The Court: Same ruling.

Mr. Hart: May that objection apply to all checks and invoices?

The Court: Yes.

Mr. Hart: In other words, there is an objection to any notations on any exhibits made by Mr. Rudykoff or anybody other than the witness or the defendant.

Mr. Rudykoff: I offer in evidence Exhibits 94
1336 and 96 for Identification.

(Exhibits are handed to Mr. Hart.)

Mr. Rudykoff: Have these been examined?

Mr. Siegel: I have the same objection. There are penciled notations also on those exhibits.

The Court: Same ruling. They will be received in evidence. The objection is noted for Mr. Hart.

Mr. Hart: I want the record to show that I have objected on behalf of the defendants Smith and
1337 Daisart.

The Court: Yes. The objection is overruled.

Mr. Siegel: And I further object to the introduction of these exhibits upon the ground that they are by a person by the name of L. A. Fox and not binding on the defendant Albert J. Deeb unless they are connected.

The Court: Objection overruled.

(Government's Exhibit 94 for Identification was received in evidence and marked Government's Exhibit 94.)

1338

Mr. Rudykoff: May I read Exhibit 94?

The Court: Yes.

Mr. Rudykoff: The first item is an invoice of L. A. Fox, April 16, 1945, to Ray Robes, one lot special extra weight rayon twill, 5,946 1/2 yards at 85 cents, $5,054 53, $1000 deposit, net $4,054.53.

The next item is L. A. Fox invoice to Ray Robes, dated April 15, 1945: one lot special print rayon jacquard, 8,689 1/2 yards at 85 cents per yard, $7,386.08, less deposit of $1000, net $6,386.08.

The next item is an invoice of George A. Howard, April 18, 1945 to Ray Robes, one lot special extra heavy weight rayon crepe, 12,582 yards at 75 cents per yard, total $9,436.50. 1339

The following item is invoice of George A. Howard, May 2, 1945 to Ray Robes, one lot special rayon crepe extra width at 75 cents per yard, $6,162, less deposit of $1000, balance $5,162. Case numbers and yardages are listed below.

The next is invoice of George A. Howard, dated May 2, 1945 to Ray Robes, one lot special rayon crepe extra width at 75 cents per yard, $6,536.71, deposit of $2000, balance $4,536.71. The case numbers and yardages are listed below. 1340

The next item is invoice of George A. Howard, dated May 2, 1945 to Ray Robes, one lot special rayon crepe extra width at 75 cents per yard, $6,753.55, deposit $2,000, balance $4,753.55. Case numbers and yardages listed below.

The next item is invoice of George A. Howard, May 2, 1945, to Ray Robes: one lot special rayon crepe extra width at 75 cents per yard, $6,717.93, deposit $2000, balance $4,717.93. Case numbers and yardages listed below.

The next item is invoice of George A. Howard, dated May 17, 1945 to Ray Robes: one lot special vat dyed heavy rayon crepe; yardage; 5,871 1/4 yards at 80 cents, $4,697. Case number 69,310, 2,026 1/2 yards navy, case No. 69,323, 1,903 1/2 yards navy, case No. 69,330, 1,941 1/4 yards red. 1341

The next item is an invoice of George A. Howard dated May 18, 1945 to Ray Robes: one lot special rayon crepe, total yardage, 12,768 yards at 80 cents,

total $10,214.80. Case numbers and yardages are
1342 listed. Colors designated, navy and red.

The next is an invoice of L. A. Fox, dated May 31, 1945: one lot 8,404 yards jacquard rayon print at 85 cents, $7,143.40, deposit $1000, net $6,143.40.

The next item is L. A. Fox invoice, dated May 31, 1945 to Ray Robes, one lot, 12,939 1/4 yards, all rayon crepe heavy weight at 80 cents per yard. $10,351.40.

The next is an invoice of Albert J. Deeb, May 31, 1945, to Ray Robes, 6,439 1/2 yards rayon jacquard at 85 cents per yard, $5,472.58 cents.

1343 I offer Exhibit 96 for Identification into evidence.

Mr. Siegel: Same objection on behalf of the defendant Deeb.

The Court: Same ruling.

Mr. Harf: Same objection for the other defendants.

The Court: Same ruling.

(Government's Exhibit 96 for Identification was received in evidence and marked Government's Exhibit 96.)

1344 Mr. Rudykoff: May I read Exhibit 96?

The Court: Yes.

Mr. Rudykoff: The first item is check of Ray Robes dated May 31, 1945, payable to L. A. Fox, $10,351.40, endorsed "L. A. Fox, for deposit in Royal Industrial Bank, Philip Paver."

The next item is check of Ray Robes, dated May 31, 1945, payable to L. A. Fox, in the amount of $6,143.40, endorsed "L. A. Fox, for deposit Royal Industrial Bank, Philip Paver."

The next item is a check of Ray Robes, dated May 18, 1945, payable to George A. Howard, in the amount of $10,214.80, and endorsed "George A. Howard," stamped endorsement, "Pay to the order of Fidelity Union Trust Company, Newark, New Jersey, Daisart Sportswear, Inc." 1345.

The next item is a check of Ray Robes, dated May 17, 1945, payable to George A. Howard, for $4,697., endorsed "George A. Howard," and deposited to the account of Daisart Sportswear, Inc., Fidelity Union Trust Company.

The next item is a check of Ray Robes, dated May 2, 1945, payable to George A. Howard, in the amount of $4,717.93, endorsed "George A. Howard, deposit to Daisart Sportswear, Inc. account, Fidelity Union Trust Company, Newark, New Jersey." 1346

The next is Ray Robes' check dated May 2, 1945, payable to George A. Howard, in the amount of $4,753.55, endorsed "George A. Howard," to the account of Daisart Sportswear, Inc., Fidelity Union Trust Company, Newark, New Jersey.

The next item is check of Ray Robes, dated April 20, 1945, payable to L. A. Fox, in the amount of $4,054.53, endorsed L. A. Fox, stamped endorsement, "For deposit, Royal Industrial Bank; Philip Paver." 1347

The next item is Ray Robes' check, dated April 20, 1945, payable to L. A. Fox, in the amount of $6,386.08, endorsed, "L. A. Fox, for deposit Philip Paver."

The next item is check of Ray Robes, dated April 24, 1945, payable to George A. Howard, in the amount of $9,436.50, and endorsed "George How-

Q. Perhaps thirty brokers? A. Yes, maybe more.

1354 Q. And you were quite active in manufacturing at that time? A. Yes.

Q. You were doing a substantial business during that period? A. Well, we have always done a pretty substantial business.

Q. During the year of 1945 have you any recollection of approximately how much business you did during that year—in both corporations, of course? A. Probably four million dollars or more than that.

Q. And to do four million or more dollars of business, that required a great deal of material? A. Yes.

1355 Q. Did you know during the summer of 1945 that Mr. Deeb had a summer home up in Mahopac? Do you recall any talk about a home up in Mahopac? A. Yes, I recall him talking and telling me that he had a house in Mahopac.

Q. Do you also remember any conversation with Mr. Deeb that he had a home up in Windham, New York? A. No.

Mr Siegel: That is all of this witness.

Cross Examination by Mr. Hart:

Q. You testified that you never saw Mr. Smith? A. No, I have never seen him until I came here today.

1356 Q. You say you never heard of him until Mr. Rudykoff mentioned his name to you? A. That is correct.

Q. You did know a party by the name of Howard? A. Yes, I think.

Q. You made checks payable to Howard? A. Yes, surely.

Q. Did you know a party by the name of Fox? A. Yes, surely.

Q. On how many occasions did you see them in your place of business? A. I couldn't recall. I would say that

they would come up with Mr. Deeb maybe five or six times. It is so long ago, honestly it is hard to recall most 1357
of these people that I did business with.

The Court: Can you tell us what this man Fox looked like, can you describe him for us?

The Witness: Well, I would say he was about Mr. Deeb's build, and was dark complexioned.

By Mr. Hart:

Q. How about Howard? A. I honestly don't recall him.

Q. Well, you purchased merchandise from him, didn't 1358
you? A. Yes.

Q. And you made out checks to him? A. Well, our bookkeeping department usually does that.

Q. I see. A. And we also—we buy those goods pretty quickly and we look at a sample and then we are through. If someone would bring a sample into the office, show it to you, and then you are done with it.

Q. Were there occasions when Fox came up alone? A. I wouldn't recall.

Q. Were there occasions when Howard came up alone? A. I wouldn't recall that either.

Q. You wouldn't say that they didn't, would you? A. I 1359
would say they did.

Q. They would come up alone? A. Maybe they came up for the checks or the checks were mailed.

Q. Or they may have come up to sell you goods or merchandise? A. Well, sure.

Q. And when you purchased merchandise from Fox and Howard, did you have conversations with them with respect to the goods and merchandise? A. Yes.

Q. And did they sell you goods as their goods? A. Yes,
1360 surely.

Q. And you made the checks out to them? A. The checks were paid to the company that sold us the goods.

Q. They were payable to Fox and Howard? A. Sure.

Q. And Fox and Howard represented that it was their goods, is that correct? A. That is correct.

Q. Let me ask you this, Mr. Halpern: In piece goods, of different kinds, do the yardages almost without exception run uniformly? A. Well, most piece goods, rayon piece goods run on an average of from 65 to 75 yards.

Q. That is the material you purchased? A. The ma-
1361 terial in the general run of goods.

Q. And there is an almost uncanny similarity in the number of yards in each bolt, isn't that so? A. Well, if you break it down into fractions, I don't know. There is usually a difference. Within ten yards they pretty much run alike. That is the way I would put it.

Q. Depending upon the type of material and the bulk of the material I assume the yardage is different, is that correct? A. Well, no, the average piece in piece goods—I would say the average goods delivered run anywhere from 65 to 75 yards, either in bulk or in lightweight goods.

Q. And are the fractions always listed? A. Yes.
1362

Q. Are they paid for in fractions? A. Yes.

Q. And have you come across on numerous occasions piece goods which have been delivered to you where they have been identical right down to the fractions in the same shipment? A. Sometimes it happens.

Q. That happens irrespective of what concern delivers them, isn't that so, whether they are purchased from one concern or another concern? A. Oh, surely.

Q. You sometimes find a bolt with 66 1/2 yards from

one concern and 66 1/2 yards from another concern? A. Yes, that happens very often. 1363

Q. There is nothing unusual about it, is there? A. No, sir.

The Court: Any further examination?

Mr. Siegel: No further cross.

Redirect Examination by Mr. Rudykoff:

Q. You are describing the yardages of a particular bolt, is that right? A. Yes, sir.

Q. And these bolts come in cartons, do they? A. Yes. 1364

Q. And there may be two or three in a carton? A. That is correct.

Q. And usually they are listed per carton? A. Yes.

Q. Well, have you ever made an examination of your invoices to determine whether the yardages in cartons coincide? A. No, I never have.

Q. For example, looking at Exhibit 93 in evidence, do you see any two yardages alike? A. No, Mr. Rudykoff. These would be bulky items. The question I answered was about piece goods.

The Court: You mean that piece goods come in 1365
bolts and generally run between 65 and 75?

The Witness: That is right, and occasionally they are the same length.

The Court: And that is the same in woolen goods, or cotton goods, or any goods?

The Witness: That is correct.

The Court: They run around 65 or 75?

The Witness: That is correct. They cut it off.

The Court: And start a new piece?

The Witness: That is correct. It makes it easier in handling.

1366

Mr. Rudykoff: That is all, Mr. Halpern.

The Court: All right.

(Witness excused.)

The Court: We will take a short recess.

(A short recess was thereupon taken.)

Mr. Rudykoff: At this time I should like to offer in evidence a certified copy of a certificate made by the State of New York Banking Department.

1367

The Court: Show it to Mr. Hart.

(Papers handed to Mr. Hart.)

The Court: Are you offering those photostats in evidence of the witness's report? If you do not want to offer them, I will. That is the report of the witness Irving Berman, excluding the first and last pages?

Mr. Hart: Pardon me?

Mr. Rudykoff: That is Exhibit 84 for identification, with the exception of the first page and last page.

1368

The Court: That is the report that we spoke of. Will you show that to Mr. Hart and Mr. Siegel?

Mr. Rudykoff: I have a copy available.

Mr. Hart: This is the exhibit I objected to upon the ground that it was a memorandum made by the Government's witness which was used by him to refresh his recollection. I still adhere to my contention that it is inadmissible.

The Court: We are referring now to the photostat of the report. What is the Exhibit number?

Mr. Rudykoff: Exhibit 84 for Identification.

The Court: Exhibit 84 for identification is received in evidence and your objection is overruled. 1369

(Government's Exhibit 84 for Identification was received in evidence and marked Government's Exhibit 84.)

The Court: The other offer has been made of the certificate of the Banking Department of the State of New York.

Mr. Siegel: I will object to its introduction on the ground that it is not binding on the defendant Deeb in any shape, form or manner. 1370

The Court: It is a question of its relevancy. Let me look at it.

(Papers handed to the Court.)

Mr. Siegel: It is irrelevant and incompetent.

Mr. Rudykoff: The individual in question—

The Court: The name that appears is one of the endorsees of the checks.

Mr. Rudykoff: On a number of checks.

The Court: I will receive it in evidence. 1371

Mr. Siegel: Exception.

The Court: You do not have to take exceptions to my rulings in this court.

Mr. Siegel: That is right. We forget about it once in a while.

The Court: I can understand that. I do not know that you have to take exceptions in the State courts either.

Mr. Siegel: No, you are right. They have changed
1372 that, too.

Mr. Rudykoff: May I read Exhibit 97, please?

The Court: Yes.

Mr. Rudykoff: Government's Exhibit 97 is a certificate under the seal of the State of New York, Banking Department:

"I, John F. Wood, Deputy Superintendent of Banks in the State of New York, do hereby certify that I have caused the records of the Banking Department to be searched by employees of the
1373 Banking Department having lawful custody of such records, and that such search shows that Philip Paver was duly licensed as licensed casher of checks for premises 1133 Broadway, New York, N. Y., from July 1, 1944 to July 9, 1947.

"Name and seal of the Banking Department at the City of New York, this 14th day of November, in the year of our Lord, 1947, John F. Wood, Deputy Superintendent of Banks."

(Papers marked Government's Exhibits 98 to 100 for Identification.)

1374

WERNER LENDENMANN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

Q. Mr. Lendenmann, what is your business or occupation? A. Manufacturer of handkerchiefs, ladies' and men's.

Q. Where is your business located? A. I do my business through a contractor in Passaic. I have no machinery of my own. 1375

Mr. Siegel: We could not hear the answer over here.

The Court: Try to speak up a little louder. He says that he does his business through a contractor in Passaic, New Jersey, and that he has no machinery of his own.

The Witness: That is correct.

By Mr. Rudykoff: 1376

Q. I show you Government's Exhibit 99 for Identification and ask you whether the documents attached to it, including the checks, represent a transaction for the purchase of merchandise on or about July 12, 1945 (handing)? A. (Examining) This is correct.

Q. Did you receive the merchandise described in the invoice? A. In this particular—the first invoice dated July 12th, the yardage was inflated to misrepresent the price, in other words.

The Court: You mean that you were billed for more than you actually received? 1377

The Witness: Correct, your Honor.

By Mr. Rudykoff:

Q. How much did you in fact pay per yard? A. 52½ cents per yard.

Q. What does the invoice show? A. This invoice of July 12th shows 18 cents.

Mr. Siegel: How much?

1378 Mr. Rudykoff: 18 cents per yard.

By Mr. Rudykoff:

Q. Did you give the check which is annexed to the invoice in payment of that particular invoice? A. That is correct. Check No. 484, dated July 12th was in payment of that particular invoice.

Q. With regard to the yards received and the case numbers received, do they appear in this exhibit? A. The exhibit shows five cases with a total yardage of 15,042 3/4

1379 yards.

Q. Was that the yardage received? A. That is the actual received.

Q. And were those the case numbers received? A. Those were the case numbers received.

The Court: Did you actually receive 15,000 odd yards?

The Witness: That is correct.

The Court: How much were you billed for?

The Witness: I was billed on this invoice for 43,874 1/4 yards.

1380 Mr. Rudykoff: I offer Government's Exhibit 99 for Identification in evidence.

Mr. Siegel: I will object to the papers attached to the exhibit there in pencil. I do not know what they indicate or whether they are part of the exhibit or not. There are some tabulations and I do not know whose they are.

The Court: Mr. Rudykoff, will you look at them

and if they are not properly part of the exhibit, will you remove them?

1381

Mr. Rudykoff: I will have the witness explain it.

Mr. Siegel: May I just come up to the Court a moment with Mr. Rudykoff?

The Court: Yes.

(Conference at bench between Court and counsel outside the hearing of the jury and outside of the hearing of the reporter.)

(Marked Government's Exhibit 99 in evidence.)

1382

Mr. Siegel: May I note an objection on the record as to the introduction of that exhibit?

The Court: The objections of all counsel are noted, particularly to the notations in pencil on the back of these exhibits.

Mr. Siegel: And also upon the ground that they are not binding upon the defendant Deeb, there has been no connection shown.

The Court: The objection is overruled. I am permitting the notations on the back of the exhibits to remain so that they may assist the jury in relating one exhibit with another. I will state, however, that they are no proof binding on the jury and that the notations are what they represent to be. That is for the jury to say from their own examination.

1383

Mr. Siegel: Would you also take that subject to connection if they are connected?

Mr. Hart: I do not join in that request. Your Honor said there is no proof and then you add "binding upon the jury." I ask your Honor to leave those words out.

The Court: The notations are no proof and they
1384 are simply permitted to stay there for the purpose of assisting the jury, if they desire to use that, in relating one exhibit to another, that is all.

By Mr. Rudykoff:

Q. Mr. Lendenmann, will you tell us something about the white sheets attached to Government's Exhibit 99: where did they come from and so forth? A. Why, it is customary in piece goods, shipped from a mill, that there is a yardage in each case, usually on top of the case, on
1385 the top piece, mentioning each individual piece with each yardage, and the total after that showing the total yardage contained in that one case. It is also customary that after you check a case you usually compare it with the invoice and check it. But when this case first came up I was asked whether I could still locate—

Q. Don't tell us that. A. All right.

Q. Whose checkmarks are those? A. Those are checkmarks of a checker at the factory that checks in the pieces. I don't know who that person is.

Mr. Siegel: I will object to it upon the ground
1386 that he does not know of his own personal knowledge. They are not his records or his memoranda at all. These are memoranda of somebody else.

The Court: Are they records kept in the regular course of business concerning this shipment?

The Witness: That is right.

Mr. Hart: If the Court please, it is not his business that he is talking about. He is talking about somebody else's business.

The Witness: That is correct, sir.

Mr. Hart: And he does not know. 1287

By Mr. Rudykoff:

Q. Were those slips in the cases? A. Those slips were in the cases.

The Court: You know that they were in the cases?

A. Because the party I am doing business with, your Honor, has been in business for about thirty years, and that is a customary practice. 1388

Mr. Siegel: I will object to that, if your Honor please, and move to strike it out. He has not testified that he has received these cases. Somebody else evidently received them.

The Court: I think the objection to those notations is a good one.

Mr. Rudykoff: I will remove these sheets in order to avoid complications.

The Court: Very well.

Mr. Rudykoff: May I now read Exhibit 99?

The Court: We have removed the notations. 1389

Mr. Rudykoff: Exhibit 99 contains an invoice of Albert J. Deeb dated July 12, 1945 addressed to Len Crest, Rochelle Park, New Jersey: one lot, 39 to 40 inch cotton batiste at 18 cents, 43,874¼ yards, $7,897.45.

The second item is a memorandum dated July 16, 1945, typewritten, addressed to L. K. Novelties, Passaic, New Jersey: 39 to 40 inch batiste, listing

1390 five case numbers, five items of yardages totaling 15,042 3/4 yards at 52½ cents per yard, coming to the same amount, $7,897.45.

The third item is a check dated July 12, 1945 payable to Albert J. Deeb for $7,897.45, signed by Mr. Lendenmann, and endorsed for deposit by Albert J. Deeb in the West Hartford Trust Company, West Hartford, Connecticut.

Mr. Hart: May I see that exhibit?

(Exhibit handed to Mr. Hart.)

1391 Q. Mr. Lendenmann, have you examined Exhibit 98 for identification? A. I did, sir.

Q. Does it contain the documents relating to a purchase made by you on or about July 20, 1945? A. That is correct.

Q. And is the check attached to it a check in payment of the invoice? A. That's right.

Q. And in that case did you receive the yardage described in the invoice? A. I did.

Q. At what price per yard? A. 52½ cents per yard.

Q. The same as the previous item? A. That is correct.

1392 Q. What kind of merchandise was it? A. It was a lawn.

Mr. Rudykoff: I offer Exhibit 98 for identification in evidence.

Q. The merchandise described in the prior exhibit, what kind was that? A. It was also a lawn.

Q. The same type? A. The same type of merchandise.

The Court: I thought you said it was batiste.

The Witness: Lawn and batiste, you can say they are the same, your Honor. It is just a lightweight 1393
cloth. It is mostly for ladies' handkerchiefs.

Mr. Siegel: I will object to the introduction of Government's Exhibit 98, which purports to be a bill made out to Len Crest and L. A. Fox, and a notation from the Textile Printing Finishing Company to the Len Crest, as not being binding upon the defendant Deeb.

The Court: The objection is overruled.

Mr. Siegel: And I further want to object to the pencilled notation on the reverse side of the bill 1394
of L. A. Fox made presumably by the District Attorney.

The Court: The objection is overruled.

Mr. Siegel: And they are talking about batiste and this bill refers to balloon cloth.

Mr. Hart: May I have the same objection as heretofore made to all of these exhibits?

The Court: Same ruling. That may be received in evidence.

(Marked Government's Exhibit 98, in evidence.)

1395

Mr. Rudykoff: May I read Exhibit 98?

The Court: What is balloon cloth?

The Witness: Balloon cloth is usually a trifle heavier than lawn. Balloon cloth is usually used for men's handkerchiefs, but this particular lot, while they called it balloon cloth, was a lightweight. Therefore it was used for printing, and we don't use heavyweight for printing.

1396 Mr. Rudykoff: Exhibit 98 in evidence, the first item, is an invoice of L. A. Fox, dated July 20, 1945 addressed to Len Crest, three cases, 9,725 3/4 yards balloon cloth at 52 1/2 cents, $5,106.02. Below is a listing of three cases with yardages totalling 9,725 3/4 yards.

Q. Mr. Lendenmann, I show you check dated July 20, 1945 and ask you if that is in payment of Government's Exhibit 98 (handing)? A. (Examining) That is correct, sir.

1397 Mr. Rudykoff: I offer the check in evidence as part of Exhibit 98.

Mr. Siegel: You are offering this as part of the other exhibit?

Mr. Rudykoff: Yes.

Mr. Siegel: To which I have already made my objection.

The Court: Same ruling.

Mr. Rudykoff: With respect to Exhibit 98 again, the second item there is a check dated July 20, 1945, payable to L. A. Fox in the amount of $5,106.02, certified July 19, 1945, by the Rochelle Park Bank, 1898 and endorsed L. A. Fox, beneath it, George Smith, deposited in Fidelity Union Trust Company, Newark, New Jersey.

Government's Exhibit 99, in substance, the first item is an invoice of Albert J. Deeb dated July 12, 1945 to Len Crest, one lot 39 to 40 inch cotton batiste at 18 cents—I think I have read this before.

The Court: Yes, you did.

Mr. Rudykoff: You may inquire.

Mr. Siegel: May I have those exhibits that you used with this witness, Mr. Rudykoff? 1399

Mr. Rudykoff: Surely.

(Exhibits handed to Mr. Siegel.)

Cross Examination by Mr. Siegel:

Q. What is your business, Mr. Lendenmann? A. I bought materials to be used for the making of handkerchiefs and shipped to the factory.

Q. How long have you been in business? A. In my own business? 140

Q. In the business of making these handkerchiefs. A. In my own business making handkerchiefs since February, 1944. I have been in the handkerchief business for thirty-five years.

Q. Before February of 1944 what did you do? A. I was employed as production manager for some of the biggest handkerchief companies in the city.

Q. In other words, you were working for some people at that time? A. That is correct.

Q. And then in February, 1944 you went into business for yourself? A. That is correct. 1401

Q. As a manufacturer? A. That's right.

Q. And then you dealt with contractors to make up the merchandise for you? A. That's right.

Q. And then you sold your merchandise to the trade? A. That is correct.

Q. Now, during that time you had to go out and buy merchandise in the open market? A. That's right.

Q. And in July of 1945 the war was almost over, that

is, the war with Europe was over at that time, and the
1402 war with Japan was over in about August of 1945? A. That's right.

Q. And you dealt with merchandise brokers? A. Yes.

Q. To get materials? A. That's right.

Q. And you would say that you dealt with a great number of merchandise brokers to get materials? A. Well, a few; I won't say a great many.

Q. And when was the first time that you met Mr. Deeb? A. I never met Mr. Deeb. I wouldn't know him if I saw him.

1403 Q. You don't know Mr. Deeb? A. I do not.

Q. You dealt with somebody else? A. That's right.

Q. Did that somebody say he was Mr. Deeb? A. No.

The Court: Who did you deal with?

The Witness: I was introduced to a young chap by the name of Joe Sadella. I will try to spell it for you. I think it is S-a-d-e-l-l-a.

The Court: Did you finish your answer?

The Witness: Just the name. I would like to go into it so you know the picture of it.

The Court: Tell us about it.

1404 The Witness: And I used to do some work for a firm up on 37th Street, and at this time this Joe was employed by this firm. That is how I came to know him, and he asked me whether I would be interested in some materials, because he knew I was in the handkerchief business. Well, I says, "Materials we can use. I need them." Because I couldn't get them from the mills direct or from the big houses on Worth Street.

1444 The next item is a check of Berkshire dated May 17, 1945, payable to George A. Howard for $4,146.75, endorsed George Howard, for deposit Royal Industrial Bank; Philip Paver.

The next item is a check of Berkshire dated the same day, payable to George A. Howard for $5,732.42, endosed in the same manner.

The final item of that exhibit is a check of Berkshire dated the same day, payable to George A. Howard in the amount of $4,273.34, endorsed in the same manner.

1445 Exhibit 102, the first item is an invoice of L. A. Fox dated May 14, 1945, to R&B Dweck, listing five cases totaling 16,113 yards special cotton DC cloth at 50 cents a yard, total $8,056.50.

Following that is a letter on the stationery of R&B Dweck, dated May 23, 1945, addressed to Lambert Printing requesting that the case numbers and yardages be printed.

Next is a check dated May 14, payable to L. A. Fox for $4,006.50, endorsed L. A. Fox for deposit in Royal Industrial Bank, Philip Paver.

1446 The final item is a check of May 14, 1945, payable to L. A. Fox for $4,050, which is endorsed in the same manner.

You may inquire.

Cross Examination by Mr. Siegel:

Q. When did you start in your business, Mr. Dweck? A. Exactly what day I don't remember.

Q. How long is it? A. About five years.

Q. And you manufacture handkerchiefs? A. Yes, sir.

He says, "I know I can get you something," and he delivered the material to me, and I told him I could use that kind of material. I did not know who he was buying the goods from at all. He says, "I know a party that has some of that material." 1405

Q. In other words, you dealt with this man whose name was what? A. Joe Sadella.

Q. Joe Sadella? A. Yes.

Q. And he said that he could get materials for you that you needed? A. That's right.

Q. And did he come and bring you some samples of materials that he could get for you? A. At one time he showed me a sample. Only one of the transactions. Which one I cannot tell you. 1406

Q. Was it cotton batiste or the balloon cloth? A. I have an idea it was the first transaction because after that I took his word for it that the merchandise was usable.

Q. The first transaction was dated July 12th and that was the time you bought cotton batiste? A. I think that is the second.

Q. The second transaction was in the latter part of July, July 20th, at which you bought balloon cloth. Now, when you dealt with him on July 12th he showed you a sample of some cotton batiste, was it? A. That's right. 1407

Q. And you discussed this transaction with him, didn't you? A. I told him I could use it.

Q. Was he instrumental in some way in getting the material to you? A. Well, he must have been. He asked me, "Where do you want it shipped?" and I told him, "It is going to be shipped to Passaic."

Q. And you had never discussed anything with Mr.

Q. You don't make the handkerchiefs yourself, do you, 1447
but you have contractors working for you? A. Contractors working for me.

Q. In other words, the material that you buy is sent to these contractors and they make the handkerchiefs in accordance with your specifications? A. That's right

Q. And then they deliver them back to you in their completed form? A. Well, no, it takes about three or four contractors before we get a finished item.

The Court: One cuts them and one stitches them and one launders them and one packs them, is that 1448
right?

The Witness: Something like that, yes.

Q. You have a brother with you in business, too, haven't you? A. Yes, sir.

Q. And you dealt with a number of merchandise brokers to obtain material, didn't you? A. Yes, sir, quite a number.

Q. You were in the market at all times looking for material and you would use brokers or anybody who could be helpful to you in obtaining materials? A. That's right.

Q. As a matter of fact, you dealt with Mr. Deeb and Mr. 1449
Deeb sold some materials to you, didn't he? A. Yes.

The Court: I cannot hear what you say. Speak up.

The Witness: Yes, sir.

Q. On a number of occasions wasn't that a fact—on a number of occasions he had seen you and sold various materials to you? A. Well, I don't know of how many really.

Deeb concerning this transaction at all? A. How could I
1408 I don't know the man.

Q. Just answer the question. A. No.

The Court: He said he never saw him.

Q. You never saw him and you never dealt with him? A. That's right.

Q. When the goods came to you, did you arrange for shipment to the L. K. Novelties in Passaic? A. I did. I told him where to ship the goods to.

Q. You didn't unpack the goods at all but just redirected
1409 them to the Passaic plant? A. To the factory, that's right.

Q. Did you have other people working for you at that time? A. No, I had no employees of my own.

Q. In other words, you didn't examine the goods personally yourself when they were received? A. I did not.

Q. And any information as to what yardage there would be would come from the plant? A. That is correct.

Q. It is not based on your personal knowledge at all—not on your own personal knowledge? A. May I say one word?

Q. Just answer the question, please. A. No, I do not
1410 check the goods personally.

Q. That's right. So you take the word of somebody else and they told you how much was in there? A. That is right.

Q. Is that correct? A. Yes.

Q. Now, I notice further another bill here, the July 20th transaction, that you dealt with a Mr. Fox in making those purchases—that is, the balloon cloth? A. Yes.

Q. And you made out a check, I notice, to Mr. Fox for that purchase? A. That's right.

The Court: Did you ever meet Mr. Fox?

The Witness: I never met Mr. Fox and also would not know him if I saw him. 1411

Q. Who negotiated that transaction? A. The same party, Joe Sadella.

Q. Joe Sadella? A. Yes.

Q. And he told you he could get some other cloth for you? A. That's right.

Q. And did he show you a sample of this balloon cloth—A. No.

Q. (Continuing)—before you bought it? A. No.

Q. What were you going to use balloon cloth for? 1412

The Court: He told us it was usable for handkerchiefs.

Q. Was balloon cloth used for handkerchiefs, too? A. Definitely.

Q. That is a very high count, isn't it, of cloth? A. It is supposed to be a high count, but—

Q. I mean—it is a finer grade? A. But when I bought the goods through Joe Sadella I did not buy balloon cloth. That was when I got the bill, they simply marked it balloon cloth. 1413

The Court: Did you get balloon cloth?

The Witness: No, I did not.

Q. What did you buy then? A. I bought lawn, that's all, like before.

Q. What is that called? A. Lawn.

Q. Lawn? A. We call it batiste or lawn, any lightweight cloth.

Q. Is that a fine cotton material? A. It is a lightweight,
1414 it doesn't have to be very fine.

Q. Was that a better grade material than the first shipment of goods that you got? A. No, it was not.

Q. And did you examine that material when it got to the plant? A. I did not.

Q. Did anybody examine the material? A. At the factory.

Q. At the factory? A. That is right.

Q. Did you get any report from anybody as to what that material was after it was shipped to the factory? A. That
1415 it was the same.

Q. Did you get in touch with Mr. Sadella after you found out about this cloth and tell him anything about it? A. No. For what reason? I had no reason.

Q. You had no reason to discuss anything with him even though you weren't satisfied with the cloth that you got? A. I didn't say that.

The Court: He did not say he was dissatisfied. He said he was billed for something different than he received.

The Witness: That's all.

1416

Q. Did you buy this batiste all the time? A. That's right, all those transactions were batiste. What they called it after I bought the goods, I couldn't help that.

Q. Balloon cloth—balloon is just a word that is used in the trade, isn't it? A. That's right. It is supposed to be a high count cloth. It is supposed to have—

Q. A higher count cotton? A. That's right.

Q. You did not submit this cloth to any expert as to any

determination as to what the cloth was? A. I wouldn't need it because I can tell that myself. 1417

Q. You didn't examine the cloth, you just said a moment ago? A. I was satisfied.

Q. Without personally examining it you were satisfied that it was something else? A. That's right; I was perfectly satisfied.

Mr. Siegel: That is all.

Cross Examination by Mr. Hart:

Q. Mr. Lendenmann, you were what is known as a jobber, is that right? A. Yes. 1418

Q. You had no factory of your own and no machines? A. That's right.

Q. And the party over in Jersey is what is known as a contractor? A. That's right.

Q. So between the jobber and contractor the merchandise is finished and sold to the public? A. That's right.

Q. If I recall correctly, you testified that the first shipment you were billed for 43,874¼ yards? A. That's correct.

Q. As appears from Exhibit 99, and that you were informed that they counted the yardage over there and only found 15,042 yards? A. That's right. 1419

Q. Did you ever see Mr. Smith? A. Where?

Q. Did you know anybody by the name of Smith? A. I know people by the name of Smith, yes.

Q. What is that? A. I know people by the name of Smith.

Q. I guess all of us do. I mean, if you look in the tele-

phone book you will find that, but you never knew Mr.
1420 Smith in connection with this transaction? A. No.

Q. Mr. Lendenmann, you are an honest and reputable business man? A. I enjoy a good reputation.

Q. And you were at that time, is that right? A. That's right.

Q. When for the first time did you find that you only got 15,000 yards and you were being charged with 43,000 yards? A. I bought fifteen thousand and some odd yards. That is what I bought. They told me it was going to be five cases, 15,000 yards. They gave me the total yardage at the
1421 52½ cents price. When I brought them the check for that amount, then only I got the bill.

The Court: And then the bill was different?

The Witness: That's right, except the total amount was there, the extension.

The Court: The total amount was the same but the yardage and the price per yard was different?

The Witness: And I strenuously objected to it.

The Court: What did you say?

The Witness: I said, "This is not the way I purchased the merchandise."

1422 Mr. Siegel: Who was this conversation with?

The Witness: Joe Sacella.

Mr. Siegel: I object to that in behalf of the defendant Deeb—

The Court: The objection is sustained.

Mr. Rudykoff: I will concede that it is not binding on the defendant Deeb but certainly it is bind-

ing on the defendant Smith. Counsel asked the question. 1423

The Court: It is sustained as to the defendant Deeb and the jury will not consider it as evidence against Deeb.

Q. Let us get this straight, Mr. Lendenmann. A. Yes.

Q. How many yards did you order? A. I mentioned five cases, and it is approximately 15,000 yards, and then he called somebody up, I don't know who. Then he gave me the exact yardages, what is on there, 15,000, whatever the yardage is, at 52½ cents, because that is the agreed price I had with him, and it amounted to that $7,800, and when I 1424
brought him the check, I think it was the very next day, then he handed me the bill which was inflated.

Q. And you knew then that this was an improper transaction with whomever you were dealing? A. That's right.

Q. How soon after that did you go to the police and report this transaction? A. I only bought 15,000 yards.

Q. Mr. Witness, you know that you had an improper bill, didn't you, and you knew that it was an improper transaction, is that correct? A. That is correct.

Q. Did you ever report it to any Federal agency? A. I didn't. 1425

Q. Did you ever report it to any of the United States officials in the Court House here? A. I did not.

Q. Did you ever report it to the District Attorney? A. I didn't report it; no, I didn't.

Q. You were a reputable business man, weren't you? A. I was.

Q. And you knew that it was—whoever you were dealing with, you knew you were having a transaction that was designed to get around the law, isn't that so? A. Well,

I got the material and I got what I paid for. I didn't think
1426 there was anything out of the ordinary there.

Q. Mr. Witness, you didn't think it was out of the ordinary, but you just finished telling us how you protested very vigorously that you did not want to take a bill like this. A. He says he can't get me another one.

Q. You have been in business how many years? A. Altogether about thirty-five.

Q. And you know that a phony bill is a phony bill, don't you? A. Yes, that's true.

Q. And you knew that this was wrong, didn't you, because you protested, didn't you? A. That's true.
1427

Q. Did you ever report it to any authority?

Mr. Rudykoff: That is repetitions. He has answered it.

The Court: He answered it twice.

A. I didn't.

Q. You didn't? A. No.

Q. Have you seen this fellow whom you bought these goods from since? A. I haven't seen him since approximately August of that year—August, 1945. I think at
1428 that time he quit his job with the firm that I used to do business with and I haven't seen him since.

Q. Did you go to the firm to find out where he is? A. They couldn't even tell me who he worked for.

Q. Pardon? A. They couldn't even tell me who he worked for. Whether they didn't want to tell me, that I don't know.

Q. Did your give the United States Attorney the address of the firm where this fellow worked? A. I did.

Q. And how long had you known this fellow before this transaction? A. Oh, maybe a year and a quarter.

Q. And what did he look like? A. Well, maybe a little shorter than I was, if that is possible. 1429

Q. That is possible. A. Maybe a little bit shorter, and I think he had a slight mustache at that time.

Q. A light mustache? A. A slight mustache, and I think he was more or less of a dark complexion.

Q. After you protested about this bill which, to use the vernacular, was a phony bill, you had another transaction, did you not? A. That's right.

Q. You still continued to do business with this fellow with the slight mustache whom you can't find, is that right? A. That's right. 1430

Mr. Hart: That is all.

Mr. Siegel: No further questions.

By Mr. Hart:

Q. At the time you gave him that check the goods—at the time you gave the check to this man you cannot find, the goods were not cut up, were they? A. They were not cut up?

Q. Yes. A. No.

Q. You had not made out your check, you had not delivered your check, had you? A. I delivered the check before I got the bill. 1431

Q. Pardon? A. I delivered the check before I got the bill.

Q. Did you attempt to return the merchandise after you got this phony bill? A. Did I attempt to return the merchandise?

Q. Yes, did you tell him to take it back and to give you your check back? A. No, I did not.

1432 The Court: You got what you paid for, didn't you?—

The Witness: That's right.

Q. Did you tell him to take back— A. No.

Q. (Continuing)—the merchandise, and give you back your check? A. I didn't.

Q. Instead of that you waited a couple of days and ordered some more goods, didn't you? A. At the proper price.

1433 *Redirect Examination by Mr. Rudykoff:*

Q. Mr. Lendenmann, did you get the invoices which are Exhibits 98 and 99 in evidence from the same party? A. Yes.

Q. And did you give the checks to the same party? A. That's right.

Mr. Rudykoff: That is all.

The Court: That is all. You do not have to wait.

(Witness excused.)

1434 Mr. Rudykoff: Mr. Dweck.

Ralph Dweck, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

Q. Mr. Dweck, what is your business or occupation? A. Manufacturer of handkerchiefs.

The Court: Speak a little louder. You are a manufacturer of handkerchiefs? 1435

The Witness: Yes, sir.

Q. Will you speak up so that the jury can hear you. How long have you been in that business? A. About five years.

Q. Did you do business under different names? A. Just under two names.

Q. What are they? A. R&B Dweck Company and Berkshire Manufacturing Company.

Q. Berkshire Manufacturing Company? A. Yes.

Mr. Rudykoff: Would you mark this, please. 1436

(Marked Government's Exhibit 101, for identification.)

Q. I show you Government's Exhibit 101 for identification, and I ask you if those are documents which relate to a transaction involving the purchase of merchandise on or about May 17, 1945 and whether the checks attached thereto are the checks in payment of the invoices (handing)? A. (Examining) Yes, sir.

Q. Did you receive the merchandise described in the invoices? A. Yes, sir. 1437

Mr. Rudykoff: I offer in evidence Exhibit 101 for identification.

(Papers are handed to Mr. Hart.)

Mr. Rudykoff: Would you mark this.

(Same marked Government's Exhibit 102, for identification.)

Q. Will you in the meantime look at Exhibit 102 for
1438 identification and tell us whether those are documents which relate to transactions involving the purchase of merchandise and whether the checks attached were in payment of the invoices (handing)? A. (Examining) Yes.

Q. Are these documents which are Exhibit 102 for identification and the ones you previously saw, Exhibit 101 for identification, are those documents kept by you in the regular course of your business? A. Yes, sir.

Mr. Rudykoff: I offer Exhibit 102 for identification in evidence.

1439 Mr. Siegel: I will object to the introduction of these bills and checks made out to a person by the name of George A. Howard and a person by the name of L. A. Fox as not being binding upon the defendant Deeb.

There is also a letter affixed to these exhibits to the Lambert Printing and Finishing Company which contains many notations on it besides the typewritten portion. I further object to these exhibits on the ground that they contain pencilled notations on the reverse made presumably by the District Attorney's
1440 Office.

The Court: The objection is overruled.

Mr. Hart: I make the same objection on behalf of the other defendants as I made with respect to all of these exhibits.

The Court: The objections are overruled.

(Marked Government's Exhibits 101 and 102 in evidence.)

Q. Mr. Dweck, do you know Mr. Deeb? A. Yes, sir. 1441
Q. Do you see him in Court? A. Do I see him in Court?
Q. Yes. A. Before?
Q. Do you see him now? A. Yes, sir.
Q. Point to him. A. There is the gentleman, right there.

Mr. Rudykoff: Indicating the defendant Deeb.

Q. How long have you known him? A. Oh, a long time.
Q. How long is that? A. I don't remember the exact number of years; at least five years.
Q. Maybe ten? A. No. 1442

Mr. Rudykoff: May I read Exhibit 101?

The Court: Yes.

Mr. Rudykoff: The first item is an invoice, George A. Howard, dated May 17, 1945, to Berkshire Manufacturing Company, listing case numbers and yardages totaling 8,996½ yards at 47½ cents, total $4,273.34.

The second item is an invoice dated the same day, May 17, 1945, on the stationery of George A. Howard, addressed to Berkshire, listing case numbers 1443
and yardages totaling 12,068¼ yards special cotton DC cloth at 47½ cents, total $5,732.42.

The third is an invoice of George Howard dated the same day, addressed to Berkshire, listing three cases with the yardages totaling 8,730 yards special cotton DC cloth at 47½ cents, total $4,146.75.

The fourth item is a letter of May 23, 1945 by Berkshire addressed to Lambert Printing and Finishing Company, listing the case numbers and requesting that they be printed.

1450 I tell you, he came a lot to me, but I don't remember exactly how many times I bought. Maybe once, maybe two or three times, I don't remember.

Q. He gave you bills on various occasions for materials that he sold to you—Mr. Deeb sold to you? A. Himself?

Q. Yes. A. No, sir.

Q. Did you get any bills from him when you bought merchandise from him? A. From him? No, sir, I never bought any goods from him.

Q. You haven't bought any goods from Mr. Deeb? A. Well, not from Mr. Deeb personally, that's right.

1451 Q. But he was in to see you on many occasions? A. Yes, sir.

Q. To interest you in buying goods? A. That's right.

Q. These goods that you have testified to here in Court you bought from Mr. Howard and Mr. Fox—these bills that you received here and these checks that you made out for the merchandise that you bought, they were dealings that you had with Mr. Howard and Mr. Fox? A. Well, I don't know. I might have had them with Mr. Howard or Mr. Fox or maybe through a broker. That I don't remember.

1452 *By the Court:*

Q. What part did Mr. Deeb have in these transactions? A. I don't remember. I don't know.

Q. What do you mean, you don't remember? A. Well, you see, even to today, sir, we buy merchandise from people I never meet, through brokers.

Q. You met Mr. Deeb, didn't you? A. Yes.

Q. You knew him for five years? A. Well, around that time, yes.

Q. Did Mr. Deeb have anything to do with these sales? A. I wouldn't swear one way or the other. I might have bought them and I may not have again. I don't know exactly. 1453

Mr. Siegel: That is all.

By the Court:

Q. What makes you think you might have bought them? A. Well, I know I bought one or two things or maybe three things from him.

Q. What did you buy from Deeb? A. I don't remember exactly. I told that to Mr. Rudykoff the other day. I don't know. I can't remember that far back. 1454

Cross-Examination by Mr. Hart:

Q. What makes you think you might not have bought? A. I know I bought something from him. What I bought, I don't know.

Cross-Examination by Mr. Siegel:

Q. Did you check your records, Mr. Witness, to find out what bills you had from Mr. Deeb? A. I checked my records. 1455

Q. You checked your records to see what bills you have, if any, from Mr. Deeb? A. From him? No, I never checked my records but the O. P. A. did, to find anything that I bought from him, and they didn't find anything from him.

1456 *By the Court:*

Q. Do you know Mr. Howard? A. No, sir.

Q. Did your ever meet Mr. Howard? A. No, sir.

Q. What did you buy this merchandise through then if you never met Mr. Howard? A. I meet a lot of brokers.

Q. Who was the broker on these dealings with Howard? A. That I couldn't tell you. I don't know.

Q. Did you ever meet Mr. Fox? A. I might have, I don't know.

Q. Did you buy merchandise from him, L. A. Fox? A.
1457 I knew there was a person at one time, Fox, but I don't know if that is the same Fox that sold me these goods or not.

The Court: Any other questions?

Redirect Examination by Mr. Rudykoff:

Q. Were there some occasions when you bought some goods through Deeb? A. Were there any what? Would you repeat that?

Q. Did you at any time buy any goods from Deeb? A.
1458 I think so, yes.

Q. Did you ever get an invoice from Deeb which was printed with his name? A. No, sir.

Q. Did you get invoices for your goods? When you bought goods, did you get an invoice? A. Always.

Q. So that you did get an invoice but not with his name, is that correct? A. Yes, sir.

Mr. Rudykoff: That is all.

Recross Examination by Mr. Hart:

Q. Do you know Mr. Smith? A. No, sir, I never saw him. 1459

Q. Did you ever see him? A. No, sir.

The Court: Step down.

Mr. Siegel: Just a moment.

Recross Examination by Mr. Siegel:

Q. Mr. Witness, did your brother also buy goods from brokers in connection with your business? A. Did my brother also buy? 1460

Q. Yes. A. Yes, sir.

Q. You don't know whether your brother dealt with Mr. Deeb, do you, or with Mr. Fox or any of these other people? A. I don't know.

Q. You don't know? A. No, I don't know.

Q. He was active in the business with you, wasn't he? A. Yes, yes, he was.

Q. And is it possible that at times when you were out that he may have spoken or dealt with these people? A. It is possible. 1461

Mr. Siegel: That is all.

The Court: Any other questions?

Mr. Rudykoff: That is all.

(Witness excused.)

The Court: We will adjourn until ten minutes after two, and the admonition that I have given you previously still holds good.

1462 After Recess—2:15 P. M.

The Court: Mr. Rudykoff, before we begin the taking of testimony, I want to make a ruling concerning certain exhibits which were introduced at the morning session by the Government.

Written on the back of some of those exhibits in the hand of the Government's attorney there were certain pencilled notations, and at the time the exhibits were offered in evidence I received them in evidence, including the notations made by the Government attorney. I did so because I felt that
1463 it might aid and assist the jury in relating one exhibit with another.

However, I instructed the jury at that time that such notations made by the Government attorney were not evidence, and I again instruct them to the same effect. However, I have examined some of those writings and I feel that in the interests of justice the objection of counsel to the writings made by the Government attorney on the back of those photostatic copies should be erased and I direct that that be done.

1464 I understand that one of those exhibits was shown to the jury.

Mr. Rudykoff: That is correct, your Honor.

The Court: And the jury did not see any of the writing on the back of them, which was objected to.

Mr. Rudykoff: That is correct.

The Court: If the jury did by any chance see any of the writings to which I have referred which were written by the Government attorney on the back of those exhibits, they are instructed by me at this time to entirely disregard them and to erase

them from their minds and not to consider them in 1465
any way in determining the guilt or innocence of the defendants.

Are there any additional instructions, counsel?

Mr. Hart: No, that is all.

Mr. Rudykoff: The Government consents to the ruling.

The Court: Does the defendant have any additional requests to make concerning that?

Mr. Hart: No, your Honor. I understand our objection is sustained.

The Court: Your objection is sustained to the 1466
writings of the District Attorney on the back of the exhibits, and in other respects your objections are overruled.

Mr. Hart: That is right.

Mr. Rudykoff: There is implicit in that ruling, your Honor, the fact that they would understand, for which I am highly complimented—my Chinese.

The Court: You did it for your own convenience.

SAM FALLACK, called as a witness on behalf of the Government, being first duly sworn, testified as follows: 1467

Direct Examination by Mr. Rudykoff:

Q. Mr. Fallack, what is your business or occupation?

A. I am in the retail—

Q. Speak up. A. I own a retail store now.

Q. Was that your business in 1945? A. No.

1468 The Court: Speak up louder so that all the jurors can hear you.

The Witness: No.

Q. What was your business in 1945? A. 1945?

Q. Yes. A. Well, I was in business then.

Q. What was it? A. Retail store.

Q. What kind of merchandise? A. Table cloths and handkerchiefs and children's wear.

Mr. Rudykoff: Will you mark these, please.

1469

(Marked Government's Exhibit 103, for identification.)

The Court: Where was your store located?

The Witness: In Paterson, New Jersey.

Q. I show you 103 for identification and ask you if the documents which are appended to the exhibit number relate to a purchase of some goods on May 9, 1945 (handing)? A. (Examining) Yes, sir.

Q. What is your answer? Speak up so that the jury can

1470 hear you. A. Well, I bought this merchandise.

Q. And did you deliver a check for that merchandise which is attached to that exhibit? A. Yes.

Q. Did you receive the merchandise described in the exhibit? A. Yes.

Q. What kind of goods was it? A. It was cotton goods to be made into handkerchiefs.

Q. Was it made into handkerchiefs? A. Yes, it was.

Q. Are these documents kept by you in the regular course of your business? A. Yes, sir.

Mr. Rudykoff: I offer in evidence Exhibit 103 for identification. 1471

(Papers handed to Mr. Hart.)

Mr. Rudykoff: Will you mark this?

(Marked Government's Exhibit 104 for identification.)

Q. Mr. Fallack, will you also look at Exhibit 104 for identification and please tell us whether the documents relate to a purchase on or about May 9, 1945 of some cotton goods (handing). A. (Examining) Is that the same as that other exhibit there? 1472

Q. Perhaps it is.

Mr. Rudykoff: May I see that exhibit, Mr. Siegel?

Mr. Siegel: Are you offering 103 in evidence now?

Mr. Rudykoff: I just want him to examine it, if you do not mind.

Mr. Hart: Surely.

Q. Would you look at Exhibits 103 and 104, and see if they are the same (handing)? A. (Examining) It is different. 1473

Q. Speak up so that we can hear you. A. Yes, this is two separate items.

Q. Two separate items, is that correct? A. Yes.

Q. Look at Exhibit 104 and please tell us if the documents attached relate to a purchase of some cotton goods on or about May 9, 1945? A. That's right.

Q. And is the check attached a check in payment of the described merchandise? A. That's right.

1474 Q. Are those documents documents which you kept in the regular course of your business? A. Yes, sir.

Mr. Rudykoff: I offer 104 for identification in evidence.

Mr. Siegel: Have you offered 103?

Mr. Rudykoff: Yes.

Mr. Siegel: Offer them together so that we can make one objection.

Mr. Rudykoff: They were both offered.

Mr. Siegel: On behalf of the defendant Deeb I
1475 object to the introduction of Government's Exhibits 103 and 104 into evidence on the ground that they are not binding upon the defendant Deeb, and my further objection is that there are also pencil notations on the reverse side of the exhibits.

The Court: I direct that the pencil notations be erased before they are marked in evidence, and they will not be exhibited to the jury before they are erased. That will be the ruling concerning all these pencil notations made by the Government attorney.

Mr. Hart: May I make the same objection on
1476 behalf of the other defendants?

The Court: Yes, with the exception of the pencil notations, the exhibits are received in evidence and your objection is overruled.

(Marked Government's Exhibits 103 and 104, in evidence.)

Mr. Rudykoff: May I at this time read Exhibits 103 and 104?

Harry Elson—for Government—Direct.

The Court: As to Exhibit 103, the first item is 1477
an invoice of L. A. Fox, dated May 9, 1945 to S. J. Fallack for 8,657½ yards special cotton DC cloth at 50 cents per yard, total $4,328.75, listing three case numbers and yardages, totaling the amount stated.

The second item is a check drawn on the amount Vernon Trust Company dated May 9, 1945, payable to L. A. Fox in the amount of $4,328.75, endorsed by L. A. Fox, for deposit in the Royal Industrial Bank, Philip Paver.

Exhibit 104 is an invoice of L. A. Fox, dated May 1478
9, 1945 to S. J. Fallack for 8,196¼ yards special cotton DC cloth at 50 cents, total $4,098.13, listing three case numbers with yardages totaling the amount stated.

Check to L. A. Fox dated May 9, 1945 endorsed, for deposit in Royal Industrial Bank, Philip Paver after the handwritten endorsement of L. A. Fox.

You may inquire.

Mr. Hart: I have no questions.

Mr. Siegel: No questions.

1479

(Witness excused.)

HARRY ELSON, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

Q. Mr. Elson, keep your voice up so that all of the jurors can hear you, and will you please tell them what your

1480 business or occupation is? A. We are manufacturers of raincoats. The business is manufacturing raincoats.

Q. Raincoats? A. That is right.

Q. Where is your business located? A. Cambridge, Massachusetts.

Q. Under what name do you do business? A. Belmont Garment Company.

Q. How long have you been in the raincoat business? A. Since 1931. The firm is in business since 1931.

Q. And is Belmont Garment Company a partnership or a corporation? A. It is a corporation.

1481 Q. And what is your connection with it? A. I am president of the corporation.

Q. During 1945 did you have some transactions with Daisart Sportswear, Inc.? A. Yes.

(Papers marked Government's Exhibit 105 for identification.)

Q. I show you Exhibit 105 for identification and ask you if that represents the documents relating to a purchase of goods on or about March 22, 1945 (handing)? A. Yes, it does.

1482 Q. In connection with this transaction whom, representing Daisart Sportswear Inc. did you see? A. George Smith.

Q. Do you know George Smith? A. I have met him but once.

Q. Do you see him? A. He might be the second gentleman there (indicating), although he has aged since I have seen him.

The Court: Will you take your hands away from your face.

The Witness: He resembles the man more closely than anyone else I see here now.. 1483

The Court: Indicating the defendant Smith.

Q. You saw him on one occasion?

Mr. Hart: If the Court please, I object. The witness did not say that he saw him. He said that he resembles him more closely than anyone else in the courtroom.

The Court: The objection is sustained.

By the Court: 1484

Q. This man that you saw, what did he tell you his name was? A. George Smith.

Q. What did he tell you his business was? A. Manufacturing sportswear in Jersey.

Q. Did he tell you where in Jersey? A. Well, it was at his place that I saw him.

Q. Where was his place in Jersey, do you remember? A. Montclair. I believe Montclair or Newark.

Q. Either Montclair or Newark, New Jersey? A. That is right. 1485

Q. How did you come to go there? A. We had received a shipment, or several shipments on these goods we purchased from Daisart Manufacturing Company, and the invoices we received for these goods were not priced—

Mr. Rudykoff: I expect to develop that, your Honor.

The Court: All right.

1486 Mr. Rudykoff: At this time I will offer 105 for identification in evidence.

(Papers marked Government's Exhibits 106 to 111 inclusive for identification.)

Q. I show you 111 for identification and ask you, does that document represent a transaction had on or about February 28, 1945, with Daisart Sportswear, Inc. (handing)? A. Yes, it does.

Q. And I show you 110 for identification and 109, 108, 1487 107 and 106 for identification, and ask you if those represent transactions had on the dates indicated on the first sheets of each of the said documents, Mr. Elson (handing)? A. Yes, it does.

Mr. Rudykoff: I offer 111 for identification in evidence.

The Court: These papers that you have been shown are all papers kept by you in the course of your business regularly?

The Witness: Yes, sir.

1488 (Papers marked Government's Exhibits 112 to 116 for identification.)

Mr. Rudykoff: I offer in evidence 106, 107, 108, 109 and 110 for identification.

Q. Mr. Elson, will you tell us what 114 for identification is? A. This is a deposit on the purchase of the goods we purchased from Daisart.

Q. Was that the initial payment? A. That is the initial

payment and this was supposed to be applied to the final delivery on the merchandise.

Mr. Rudykoff: I offer 114 for identification in evidence.

Q. Will you please examine 115, 112, and 113 for identification and tell us if those checks represent payments in connection with the transactions described in the instruments you have identified previously (handing)? A. Yes, they do.

Mr. Rudykoff: I offer in evidence 112, 115, and 113 for identification.

Q. I show you 116 for identification, containing six pink slips. Will you describe them? A. Well, these are receiving slips. When any merchandise comes to the plant, the receiving clerk records them in a book, of which these slips are the original copies and the duplicate copy remains in the book. These slips are then attached to the invoice of these goods, and unless these slips are attached to the invoice, an invoice can't be paid. This constitutes proof of delivery to us of the goods; that we received the merchandise, whatever it may have been.

The Court: That was made by the receiving clerk in the regular performance of his duties?

The Witness: That's right.

Q. How are the goods identified? A. Well, they are identified by case number, by the fabric itself, or by an order which we may have on the goods.

1492 Q. And were these six slips kept in the regular course of your business, of Belmont? A. Yes, they were.

Mr. Rudykoff: I offer 116 for identification in evidence.

May I presume while the examination of the exhibits is taking place—

The Court: There are several exhibits outstanding. Can we dispose of that now?

Mr. Siegel: I, of course, object on behalf of the defendant Deeb to the introduction of these ex-

1493 hibits. They are not in any way binding on the defendant Deeb.

The Court: Mr. Hart, have you any objection?

Mr. Hart: Yes, your Honor. I just want to look over this one. I object upon the ground that there is no proof whatsoever that Daisart or Smith were involved in any of the transactions set forth in these exhibits.

The Court: That is for the jury to say on all the evidence in the case. The objections are overruled.

Mr. Siegel: To Deeb, too?

1494 The Court: As to Deeb, too.

Mr. Siegel: Will your Honor take it subject to connection as to Deeb? Those transactions were between Belmont Garment Company and the Daisart Company.

The Court: They are received in evidence. It is for the jury to determine—

Mr. Siegel: I respectfully except.

Mr. Rudykoff: I offer in evidence 105 to 116 for identification inclusive.

(Marked Government's Exhibits 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115 and 116 in evidence.)

Q. Mr. Elson, you described one occasion when you saw Mr. Smith at his place of business, is that correct? A. Yes, sir.

Q. At that time who was present? A. Mr. Smith and I.

Q. And did you have a talk? A. Yes.

Q. So far as you recall, tell us everything you said and everything he said, indicating if you can who said whatever was said. A. Well, I can't recall exactly what was said, but I can recall the purpose of my visit—

The Court: Tell us the substance of what was said. Tell us the substance of your conversation, not the exact words, if you cannot.

Q. Speak up to the jury, Mr. Elson. A. We had received invoices for, I believe it was the first and second shipments on these goods we had purchased from Daisart, and the invoices weren't priced at the price we had purchased these goods. Consequently, I attempted to get from Daisart—that was the time I went over to Montclair and saw Mr. Smith, and asked him for other invoices to justify the checks that we were issuing against the goods that we received, and I couldn't or he couldn't or wouldn't give them to me.

The Court: What did he say when you asked for corrected invoices?

The Witness: He says "those were the bills I can give you. That is all I can give you," or words to that effect. I don't recall exactly what he said.

1498 The Court: What did you tell him was wrong with the invoices that you objected to?

The Witness: Well, they were priced below the price I was paying for the goods.

By Mr. Rudykoff:

Q. What about the yardage? A. The yardage—there was no question on the yardage involved. It was the price per yard.

Q. That was less than— A. It was less than I had
1499 agreed to pay for these goods and it was less than I had been or was paying for them.

The Court: You mean that your check was for a larger amount than the invoices called for?

The Witness: My check was for a larger amount than the Daisart invoices called for, but my check was for the amount we agreed to pay for these goods.

Mr. Hart: I move to strike out "we agreed," unless he tells with whom he agreed.

The Court: Very well. Who did you arrange the
1500 price with?

The Witness: The price was arranged on the telephone, so far as I knew. I don't know if it was Mr. Smith, but it was somebody representing Daisart Manufacturing.

Mr. Hart: I move to strike out "so far as I know."

The Witness: It was a telephone conversation.

The Court: Strike it out. How did you come to buy these goods from Daisart? Suppose you tell us that.

The Witness: Well, I received a telephone from Daisart Manufacturing Company offering me these goods. 1501

The Court: Did you know the party who was on the phone?

The Witness: No, I did not know who the party was on the phone.

The Court: And who did that party say he was, if you recall?

The Witness: I don't recall whether he said who he was, what he simply said, he was representing—

Mr. Hart: I object to anything further than that. 1502

The Witness: —Daisart Manufacturing Company.

Mr. Hart: I move to strike out the latter part.

The Court: Yes.

Mr. Hart: I move to strike out what somebody said who is not identified in this courtroom or in this proceeding.

The Court: I will allow it to stand. After you had this conversation on the telephone did you buy merchandise?

The Witness: Yes, sir. 1503

The Court: And was that from the same person that represented himself to be Mr. Smith?

The Witness: Yes, sir.

By Mr. Radukoff:

Q. Did you receive any invoices in connection with the transaction other than the one you have described? A. Other than these?

1504 Q. Are those invoices the ones you received from Daisart? A. No, these are not invoices I received from Daisart—

Mr. Hart: When you say "those," what are you referring to? Exhibits what?

Mr. Rudykoff: Exhibits 105 to 111 inclusive.

Q. The checks were payable to Daisart, is that right? A. Yes, they were.

Q. With regard to invoices rendered by Daisart, you told us about an invoice which was rendered for a lesser
1505 price per yard, is that right? A. That is correct.

Q. What, if anything, happened to that invoice? A. Why, I refused it.

Q. Did you take it? Did you receive it? A. Yes, I received it.

Q. What did you do with it? A. I don't recall whether I returned it to Daisart or whether I destroyed it. I believe I returned it.

Q. Was that the initial invoice you got? Was that the first one? A. Yes.

Q. Was it after that time that you saw Mr. Smith? A. Yes.

1506 Q. After that time did you get additional shipments? A. Yes.

Q. And after that time did you get additional invoice from Daisart? A. I may have.

Q. Do you have any definite recollection one way or the other? A. I probably did.

Q. Well, if you cannot say— A. I can't say definitely that I did or didn't.

Q. I direct your attention to the memos appearing on the checks at the left-hand side. Will you please examine them

and tell us when they were made with respect to the de- 1507
livery of the checks. Was it before or after delivery? A. I don't understand the question.

Q. Do you see those memos on the left-hand side? A. Yes, sir.

Q. When were they made with regard to the delivering or sending the check to Daisart? Was it before or after? A. When were those memos made?

Q. Yes. A. With regard to sending this check to Daisart?

Q. Perhaps I do not make myself clear. A. I don't understand you.

Q. Were those memos on the check at the time you signed 1508
it? A. I didn't sign it.

Q. At the time the check was signed were they on the check itself? A. Yes.

Q. Had you given any instructions with regard to those memos? A. Yes.

Q. What were they? A. My instructions to the bookkeeper were to list the items, the yardages and so on, that we were paying for, relative to each individual payment or check.

Q. With regard to records of the firm, what was done about keeping a memorandum of the amounts involved? 1509
A. We made our own invoices which these are photostatic copies of, to coincide with the yardages received at the price we issued the check.

Q. And were those memos used by your firm as the original basis for entering into your books? Do you understand my question? A. Were these invoices used by our bookkeeper for entering the yardages and amounts in our books?

Q. Yes. A. Yes.

1510 The Court: That is the corrected invoice that you directed to be made?

The Witness: That's right, yes, sir.

Q. And are your books audited regularly? A. Yes, sir.

Mr. Rudykoff: May I at this time read the exhibits?

The Court: Yes.

Mr. Rudykoff: Exhibit 105 is a statement on the stationery of the Belmont Garment Company, dated March 22, 1945, on which appears Daisart Manu-
1511 facturing Company, 6 cartons, 5916, at .55305, $3,271.84. Down below, No. 409/5945.

Exhibit 106 is a statement also on the stationery of Belmont Garment, April 5, 1945, Daisart Manufacturing Company, 7 cases No. 88424 to 88432, 6430-6/8 yards at .55305, $3,556.53.

Exhibit 107 on the stationery of Belmont Garment Company, dated April 7, 1945, Daisart Manufacturing Company, 15,396-1/2 at .55305, $8,515.03.

Exhibit 108 is dated March 26, on the same stationery, Daisart Manufacturing Company, 6 cartons
1512 5526-3/4 at .55305, $3056.67.

February 5, 1945, as to Exhibit 109, on the same stationery, Daisart Manufacturing Company, 28,270-1/2 yards at .55305, $15,635.

On the stationery of Belmont Garment Company, Exhibit 110, February 28, Daisart Manufacturing Company, 213-4/8 yards, .55885, $119.31.

Exhibit 111, on Belmont stationery, February 28, 1945, Daisart Manufacturing Company, 10,039 yards, .55885 per yard, $5,610.30, 11 cartons.

Exhibit 115 is a check of Belmont Garment, dated February 28, 1945, payable to Daisart Manufacturing Company, $5,610.30; endorsed Daisart Manufacturing Company, underneath Daisart Sportswear; Bank: First National Bank and Trust Company, Montclair. 1513

Exhibit 114 is a check of Belmont, dated December 18, 1944, payable to Daisart Manufacturing Co., $17,500, endorsed Daisart Manufacturing Company, underneath George Smith, Attorney; stamped, "Deposited to account of Ida Smith," and the bank appears to be the First National Bank and Trust Company. 1514

Exhibit 112 is a check of Belmont, dated February 5, 1945, payable to Daisart Manufacturing Company, for $15,322.30, and endorsed Daisart Manufacturing Company, George Smith, Attorney. Underneath, Ida Smith, Deposited in—it appears to be the First National Bank and Trust Company.

Check of Belmont, Exhibit 113, dated May 9, 1945, Daisart Manufacturing Company, $1,019.28, and endorsed Daisart Manufacturing Co., "George Smith, Prop." Underneath, "Daisart Sportswear, Inc." Bank, Fidelity Union Trust Company, Newark, New Jersey. 1515

Exhibit 115, on the left-hand side of the check appears in writing "10,039 yards tan."

On Exhibit 112, the left-hand side, appears a memorandum, "Merchandise $15,635, less $312.70, total, $15,322.30," which is the amount of the check.

On Exhibit 113, there appears at the left-hand side 213-1/8 yards Gab., $119.31; 5916 yards Gab. $3,271.84; 5,526-3/4 yds., $3,056.57; 15,396-1/4 yards,

1516 $8,515.03; 6,430-3/4 yards, $3,556.53. Total, $18,519.28. Debit $17,500, balance $1,019.28, the amount of the check.

Q. Was Exhibit 113 the final payment for the purchase involved? A. Yes.

Q. What kind of goods were these? A. They were cotton goods. Water repellent, that we used for the manufacture of raincoats.

Q. Is that a gabardine? A. Well, it isn't a gabardine. These goods were twill.

1517 Q. What color? A. Pardon me?

Q. What color were they? A. Cocoa tan.

Mr. Rudykoff: You may inquire.

Cross Examination by Mr. Hart:

Q. Did you ever do any business with Steinam & Company? A. Yes, sir.

Q. Do you know Bert Julian, the vice-president? A. Yes, sir.

Q. He is a very close personal friend of yours? Isn't he?

1518 A. Yes, sir.

Q. Do you know him socially as well as in a business way? A. Yes, sir.

Q. As a matter of fact, Mr. Julian was the one who originally had these dealings with you in this matter, wasn't he? A. No, sir, not that I know of.

Q. Not that you know of? Just one minute. Do you know Mr. Julian personally? A. Yes, sir.

Q. He is the vice-president of the Steinam Company, and I asked you the question: Isn't it the fact that Mr. Julian

was the one you had these dealings with, and you said "Not that I know of." Now, Mr. Witness, will you answer my question truthfully? 1519

Mr. Rudykoff: I object and move to strike out "truthfully".

The Court: Answer that question, did you have this transaction with Mr. Julian?

The Witness: No, sir.

Q. Mr. Witness, did you know that these goods were coming from Steinam & Company? A. No, sir, I didn't know it at the time. 1520

Q. Did you look at the invoices or the shipping—

Mr. Hart: May I have those exhibits, please.

Mr. Rudykoff: Surely (handing).

Q. You gave all these papers to the United States Attorney, didn't you? A. Yes, sir.

Q. You saw them before you gave them to him, did you not? A. Yes, sir.

Q. You saw them before you paid out your checks, didn't you? A. Yes. 1521

Q. Now, will you take a look at this, referring to one of the papers attached to Exhibit 110 (handing). A. (Examining.)

Q. You saw this, did you not, at the time you received the goods? A. At the time I received the goods I saw this all in, yes, sir.

Q. And you knew that this bill of lading showed that these goods had come from Steinam & Company, isn't that correct? A. Yes, sir.

1522 Q. You spoke to Mr. Julian over the phone this week, didn't you? A. Yes, sir.

Q. And you spoke to him about this case, didn't you? A. Yes, sir.

Q. And he told you, did he not, that you should deny that you had any dealings with him with respect to these shipments? A. He didn't tell me to deny that I had any dealings with him in respect to these shipments.

Q. Well, tell us what he said and what you said to him over the phone. A. He said, Mr. Julian—

Q. Just one moment. That conversation was when?

1523 The Court: When did you have this telephone conversation with Mr. Julian?

Q. I mean the last one you had. You had several with him in the course of the last two weeks. A. I had lunch with him today.

Q. When did you have the telephone conversation with him previous to meeting him today? A. Friday, I believe it was, or Saturday.

Q. And you arranged to meet today, didn't you? A. Yes—

1524 Q. And he knew you were coming to court today, didn't he? A. Wait a minute. I didn't arrange to meet him today when I talked to him Friday or Saturday night, I believe it was.

Q. When you spoke to him Friday or Saturday night you discussed with him the fact that you had been subpoenaed here for today? A. I had not been subpoenaed.

Q. You had been notified to be here today? A. No, sir.

Q. When were you notified to appear here today? A. Yesterday.

Q. Oh, I see. You spoke to him Friday, and at that time you didn't know you were coming to court? A. That is right. 1525

Q. And you spoke to him, though, about this case, didn't you? A. Yes, sir.

Q. You told him you expected to be called to court? A. Yes, sir.

Q. But you didn't know when, is that right? A. That's right.

Q. When did you get the subpoena? A. I didn't get a subpoena.

Q. When did you get the notification? A. I got it on the telephone yesterday. 1526

Q. And after you got the notification yesterday you called up Mr. Julian and arranged to meet him today? A. Yes.

Q. Where did you meet him? A. At my office.

Q. Where is your office? A. 200 Fifth Avenue.

Q. Pardon? A. 200 Fifth Avenue.

Q. And you discussed this matter with him, did you? A. Yes, sir.

Q. Now, previous to last week you also spoke to him on the phone, didn't you? A. Oh, yes. 1527

Q. You spoke to him, in fact, the first time you were sent for by the United States Attorney's office, didn't you? A. After I had been sent for by the United States Attorney's office.

Q. After you had been sent for and before you came up to talk to them? A. No, sir.

Q. Now just stop and think and see whether that isn't so. There came a time, did there not, when you were sent for to come down to the United States Attorney's office? A. That is right.

1528 Q. When was that? A. November 7th I received a notice to come to the United States Attorney's office for November 7th, and I couldn't make it.

Q. Didn't you try to get Mr. Julian on the wire? A. No.

Q. You did call him right after you left the United States Attorney's office, though, didn't you? A. Let me put it this way: I received the notice on the 7th to appear at the office on the 7th.

Q. Yes, and you didn't have time to call Julian. A. I couldn't be here on the 7th, so I called Mr. Rudykoff and
1529 said "I just got the notice today. I am in Boston, I can't be here in New York on the 7th," and we arranged to make it on Tuesday.

Q. What was that Tuesday? A. Tuesday was Armistice Day.

The Court: The 11th.

A. (Continuing) On the 11th, and then I wired Mr. Rudykoff, asking him to confirm the appointment for Tuesday because Tuesday was Armistice Day, and he wired back and he said "Make it Wednesday," and I came down
1530 Wednesday.

Q. When did you phone to Julian? A. On the way home from the office I stopped in at Mr. Julian's office. He wasn't in. I left word for him to call me at my office and I waited until around four-thirty when I had to go home, and he hadn't called yet.

Q. He called you in Boston? A. He called me the following day or the following night.

Q. He called you in Boston, didn't he? A. Yes.

Q. And you spoke to him and told him about what Mr. Rudykoff had asked you; isn't that so? A. Well, yes.

Q. Did you tell him that his name was mentioned in the discussion between Rudykoff and yourself? A. I think so. 1531

Q. You never knew Smith or Daisart, did you, before you knew Julian? A. Not before I knew Julian.

Q. You never had any agreement with Smith prior to the time that you received these goods, the first shipment? A. That's right.

Q. You spoke to somebody, didn't you? A. With reference to these goods?

Q. Yes. A. I spoke to somebody on the telephone.

Q. Didn't you speak to Mr. Julian? A. Before I entered into the contract of these goods? 1532

Q. Before you got the first shipment? A. Yes. I think I talked to Mr. Julian. I might have talked to Mr. Ackerman, too.

Q. We will leave Mr. Ackerman out temporarily. Whatever dealings you had in this transaction with Steinam was done with Mr. Julian? A. I didn't have any dealings in this transaction with Steinam.

Q. Mr. Witness, you mean to say when that first shipment came in, or prior to that first shipment that came in of Steinam's goods, the vice-president of which is Julian, that you never had a conversation with Julian before that about these goods? A. I had a conversation with him about the goods about—yes, about the goods, these goods. 1533

Q. And that was before the first shipment, wasn't it? A. Yes.

Q. And you know those goods were shipped by Steinam, according to the bill of lading, originally intended for Daisart and then they were re-routed to you? A. Yes.

1534 Q. Did you speak to Mr. Julian about the re-routing of those goods to you? A. No, sir.

Q. Did you order them re-routed to you? A. No.

Q. That originated in Steinam's, didn't that? A. Apparently they did, from the—

Q. When you spoke to Julian did you ask him how it happened that goods which were intended for Daisart were sent by Steinam to Daisart and then re-routed to you? A. No.

Q. What did you say to him about the goods before the first shipment? A. Before the first shipment all I said to
1535 Julian about the goods was, "Does he know or do business with Daisart Manufacturing Company?"

Q. Yes. A. And he said "Yes."

The Court: What else did he say?

The Witness: Well, I asked him about the credit standing of Daisart Manufacturing Company.

The Court: What else was said about the purchase of goods?

The Witness: Nothing was said about the purchase of goods except that I have an opportunity to buy goods from Daisart.

1536 The Court: You told that to Julian?

The Witness: Yes.

By Mr. Hart:

Q. Did Julian say to you that the only goods they shipped to Daisart were shipped on priorities and that Daisart could only use them for the specified purpose in the priority? A. No, sir.

Q. Well, when you received the first shipment of goods did you call up Julian? A. No.

Q. Did you call him up after that? A. I may have. 1537

Q. With respect to the shipments of goods? A. No. I had no call to call Julian with respect to shipments of goods.

Q. When you saw these goods were being re-routed to your concern from Steinam, did you ever mention it to Julian? A. I may have.

Q. During this time, the time of these deliveries, he was visiting you in Boston quite regularly, wasn't he? A. Well, we were doing business with Steinam, yes.

Q. He was visiting you socially and business, wasn't he? A. Probably.

Q. Well, probably. Listen, Mr. Witness, he was at your 1538
home, wasn't he? A. He was at my home often.

Q. Was he at your home during the time the goods were being delivered? A. I can't answer that. I don't remember whether he was at my home during the early part of 1945—

Q. You have him checks, didn't you— A. He might have been.

Q. You gave him checks, didn't you, during that period? A. Gave him checks?

Q. Checks payable to Daisart. A. No, sir.

Q. You didn't think—your contention is that you didn't 1539
think Julian was involved in this thing at all as far as shipping goods from Steinam without priority orders to you—you didn't think he was involved in any way, did you? A. I knew that the goods originated from Steinam after the first shipment.

Q. Who was the first one you called up when you left the United States Attorney's office? A. Julian.

Q. Who was the first one you got a call from when you got back to Boston? A. He called me the next night or two nights later.

1540 Q. And you had lunch with Julian today? A. Yes, I did.

Q. You gave a deposit check on the first order, didn't you—before the first order was shipped? A. That's right.

Q. Well, before the first order was shipped you didn't know Mr. Smith, did you? A. That is when I got to talking to Mr. Julian and Mr. Ackerman.

Q. Mr. Witness, let's stick to one thing at a time. You gave somebody a deposit check before that first shipment, isn't that so, of $10,000? A. $17,500.

Q. $17,500, right. A. That's right.

1541 Q. You didn't know Smith at that time, did you? A. No.

Q. You never saw him? A. No.

Q. You knew Mr. Julian? A. Yes.

Q. You didn't give that check to Smith? A. No, I didn't give it to him.

Q. You gave that check to Julian at your home in Boston? A. No, sir.

Q. Are you sure about that or do you want to just think for a moment and check it? A. No, I didn't give it to Mr. Julian at my home in Boston.

1542 The Court: Did you give it to Julian at any time?

The Witness: I don't believe I gave it to Julian.

Q. You don't believe you did? A. I came down to New York with that check and that is when I inquired at Steinam's about Daisart Manufacturing Company.

Q. Mr. Witness, you are in a court testifying and you say in answer to a question, did you give that check to Julian? You say, I don't believe I gave a check to Julian. A. That is correct.

Q. You know you gave that check to Julian, don't you? 1543
A. No, I don't.

Q. You don't believe you did? Is that the best answer you can give? A. That's right.

By the Court:

Q. You came down from Boston with this check of $17,500? A. Yes.

Q. What did you do with the check after you got here in New York? A. Well, I inquired on the standing of Daisart Manufacturing Company. 1544

Mr. Hart: I didn't get that, Judge.

The Court: He inquired as to the standing of Daisart Manufacturing Company.

Q. Where did you inquire? A. At the Steinam Company's place of business.

Q. What did you do with the check? A. I probably mailed it to Daisart.

Mr. Hart: I move to strike out what he probably did. 1545

Q. Do you remember what you did? A. No, sir, I don't.

The Court: Strike out "probably."

Q. Do you know how it finally got into the Daisart Sportswear account? A. Well, I issued the check to Daisart.

By Mr. Hart:

Q. You don't remember whether you delivered it to Julian or who you gave it to, do you? A. No, I don't.

1546 Q. Mr. Witness, all of these goods that were received by you were received direct from Steinam? A. No.

Q. Although originally consigned to Daisart and re-routed, is that correct? A. I can't say that that is correct. All I know is that these goods as far as we were concerned, came from Daisart.

Q. Mr. Witness, the bills of lading show that they never reached Daisart, don't they? They show that they were re-routed before they reached Daisart and consigned to you or re-routed to you? A. Well—

Q. You saw the bills of lading, d' n't you? A. Well,
1547 I saw them, but I haven't seen them recently.

Q. You saw them five minutes ago.

The Court: You may look at them now. (Witness examines papers.)

A. Yes.

Q. Yes what? You mean yes, those goods never reached Daisart; they were re-routed to you, is that right? A. Well, I don't know whether they never reached Daisart.

Q. Do the bills of lading show that? Mr. Witness, I am not in the piece goods business but I am asking you—
1548 A. The shipments originate at Steinam Company, South Carolina, reconsigned at destination, and given to Harrison.

Q. All right, they were reconsigned, were they not, in each case to you? A. Yes.

Q. Mr. Witness, I wanted to ask you this question: You came to New York with a $17,500 check and you didn't want to part with that unless your knew that, that the party's credit was good, is that right? A. Yes.

Q. So your story that you told here is that you spoke to Steinam & Company and you said to them, "How is Daisart's credit?" Is that right? A. Well, yes.

Q. You knew that Daisart had no credit with Steinam, that they were paying cash, isn't that so? A. No, I didn't know that. 1549

Q. Did you find it out? A. Well, I knew that Daisart was doing business with Steinam and was meeting their obligations and was a satisfactory account. That is what I learned when I talked to Steinam.

Q. When you spoke to Steinam did they tell you that Daisart had no credit and they were paying cash for everything? A. I don't recall that they told me that.

Q. Based upon your experience, if a person or a firm had no credit and was paying cash for everything, would you send a $17,500 check to that concern? A. Possibly yes. 1550

Q. Probably not, though, isn't that so? A. Well, I did.

Q. You say now that you don't know whether you did or not, and you don't know whether you gave it to the Steinam Company or to the vice-president of Steinam, and you don't know what you did with that check, do you? A. (No answer.)

Mr. Hart: All right, that is all.

The Court: What was his answer? Do you know what you did with the $17,500 check?

The Witness: I think I mailed it to Daisart. 1551

Mr. Hart: I move to strike that out.

The Court: When you say you think, is that your best recollection?

The Witness: Yes, sir.

The Court: Motion denied.

Mr. Hart: Exception.

1552 *Cross Examination by Mr. Siegel:*

Q. Mr. Witness, you never met a Mr. Deeb, did you? A. Mr. who?

Q. Deeb. A. No, not that I know of.

Q. You never did any business with a Mr. Deeb, did you? A. No.

Mr. Siegel: That is all.

By Mr. Hart:

Q. Did you ever get a bill on the Daisart stationery for
1553 this merchandise? A. Yes, I did.

Q. Have you got any bills there? A. Here?

Q. Yes, did you produce a single bill from Daisart? A. No.

Q. Whose bills are those? A. Those are our own.

Q. You made out your own bills? A. That is right.

Q. Is that a usual thing in your business? A. No, it is not a usual thing in our business.

Mr. Hart: All right.

By the Court:

1554 Q. Why did you make out bills of your own? What was the occasion for doing that? A. Well, I thought I had explained that the bills that we got from Daisart Manufacturing Company were not at the price which we had bought the goods and were paying for these goods.

Q. You made out your own bills? A. Consequently we made out our own bills to coincide with that price, and we had the yardages on the checks to verify the price, that those were the prices which we were paying for those goods. If I had entered Daisart's checks—Daisart's invoices, I couldn't pay for these goods without showing a check issued in excess of the invoice.

By Mr. Hart:

1555

Q. Where are the invoices that you are talking about, Daisart's invoices? Did you ever get any invoices? A. Yes, I did.

Q. Where are they? A. I don't know where they are now. I didn't keep them.

Q. Pardon? A. I didn't keep them because they weren't priced with the price that we agreed to pay for the goods.

Q. You made out your own bills and checked them and you didn't keep the bills that you say you got from Daisart? A. That is right.

1556

Q. Did you ever speak to Julian about the price of these goods? A. I might have. I think I did.

Q. Did you speak to him today about what testimony you were going to give today? A. No, I just talked to him about the whole thing.

Q. You didn't talk about the case at all, did you? A. Yes, we talked about the case.

Q. Did you talk about the case over the telephone when you got back to Boston after speaking to Mr. Rudykoff? A. Yes, I said I was down to see Mr. Rudykoff.

Q. Did you speak about what Mr. Rudykoff asked you and what you told him? A. I suppose so.

1557

Q. As a matter of fact, before you went down to Mr. Rudykoff he told you to call him up and tell him what was told to you? A. No, I didn't see Bert Julian until after I had left Mr. Rudykoff.

Q. But last week— A. Last week—

Q. Last week when you saw him and you told him you were coming down to court to testify, that is, after you had the postponement or after you got the postponement from the 11th to the 11th and then to the 12th of November,

1558 you spoke to Julian and told him that you had a postponement, didn't you? A. No, you misunderstand me.

Q. Didn't you get a subpoena to come down on the 7th—

The Court: I think we have had that.

Mr. Hart: Pardon me?

The Court: We have had that several times.

Mr. Hart: All right. I just wanted it clear.

Q. I don't misunderstand you on that, do I, you did get a subpoena? A. Is a request a subpoena? Let me ask that question.

1559

Q. Did you get one to come down on the 7th, and have it postponed to the 11th, and then find out that it was Armistice Day, and then it was put over to the 12th? A. Yes.

Q. Did you tell Mr. Julian about the fact that you had the postponement and tell him that you would get in touch with him after you got through with Mr. Rudykoff or after Mr. Rudykoff got through with you? A. No.

Q. But you did call him after you got through? A. After I left here, yes.

1560

Mr. Rudykoff: Are you through?

Mr. Hart: Yes.

Redirect Examination by Mr. Rudykoff:

Q. I direct your attention to Exhibit 114, which is the check of $17,500, and it is dated what date? A. December 18th.

Q. When was it deposited? Look at the back. A. December 22nd—no, December 20th.

Q. December 20th? A. Yes.

1561

Mr. Rudykoff: That is all.

The Court: Are there any other questions?

Mr. Hart: No.

Mr. Rudykoff: That is all, thank you.

JAMES KEATS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

1562

Q. Mr. Keats, what is your business? A. Manufacturing.

Q. What do you manufacture? A. Different household items. Household items. Handkerchiefs. Many items.

Q. How long have you been in business? A. Oh, twelve years.

Q. Under what name? A. Well, different names.

Q. What is your present style of business? Under what name is it? A. J. F. Keats.

(Paper marked Government's Exhibit 117, for identification.)

1563

Q. Would you please examine Exhibit 117 for identification and tell us whether they relate to transactions involving the purchase of certain cotton finished piece goods (handing)? A. (Examining) Yes, it does.

(Paper marked Government's Exhibit 118, for identification.)

Q. Have you looked through them? A. These are—

Q. Speak up so that the last juror can hear you. You
1564 are a pretty sound man. Speak up. A. These are all the bills I got.

Q. Who did you see in connection with the purchase of these materials? A. We saw two people.

Q. Who were they? A. Albert Deeb and L. A. Fox.

Q. Who delivered to you the invoices which have the name L. A. Fox printed? A. The invoices?

Q. Yes. A. Well, the party by the name of Fox.

Q. Who gave them to you? A. A messenger.

By the Court:

1565

Q. How long do you know this man Fox? A. I haven't met him until I started buying goods from him.

Q. How did you meet him? A. I met him around the street there. You meet lots of people when you buy goods.

Q. Around what street? A. Around Fifth Avenue.

Q. Where on Fifth Avenue? A. 31st Street.

Q. Put your leg down. A. (Witness complies.)

Q. Who introduced you to him? A. No one. I just heard his name and then he came in to see me one day and he offered me some goods and I bought them.

1566 Q. Where is his place of business? A. He gave me those bills there. I bought many goods from many people.

The Court: I want you to be a little more respectful.

Mr. Hart: If the Court please, I object to the manner—

The Court: Your objection is overruled.

Mr. Hart: May I state my objection upon the record, if the Court please?

The Court: Yes.

Mr. Hart: I object to the manner of the questioning by the Court of this witness and other witnesses who apparently do not give answers which are satisfactory to the Court. 1567

The Court: Your objection is overruled, and the Court has no desire to get any answer except the truth.

Mr. Hart: I object to your Honor talking to this witness and other witnesses in such terms of rebuke, such as, "Take your hand down," and "Put your leg down."

The Court: The Court made observation concerning this witness's posture on the chair because the Court felt that it was disrespectful. The Court directed other witnesses to remove their hands from their mouth because it was impeding their speech and making it difficult for the jury to hear. Your objection is overruled. 1568

Mr. Hart: All right, your Honor, exception.

The Court: Where was this man Fox's office?

The Witness: I don't know.

The Court: Were you ever at his office?

The Witness: No.

The Court: You may proceed, Mr. Rudykoff. 1569

By Mr. Rudykoff:

Q. Is this your signature (indicating)? A. (Examining) Yes.

Q. Will you read this? A. (Witness reads paper.)

Q. Did you swear to it? A. Yes, I did.

Mr. Rudykoff: I ask for leave to lead this witness
1570 in view of this statement.

The Court: I suggest that the paper be marked for identification.

(Paper marked Government's Exhibit 119 for identification.)

The Court: All right, I would like to look at it. In the meantime we will declare a recess for ten minutes.

The Witness: What does the witness do, sit
1571 here?

The Court: Please, you will sit there and do as the Court directs you. We want no comments from you.

The Witness: I just want to know if I sit here.

The Court: We want no comments from you.

Mr. Rudykoff, I suggest that the witness be escorted to the witness room.

Mr. Rudykoff: Very well, sir.

(A short recess.)

1572

JAMES KEATS, resumed the stand:

Direct Examination by Mr. Rudykoff (Continued):

Q. Mr. Keats, after reading Exhibit 119 for identification, is your memory refreshed? A. What's 119?

Q. This (indicating). A. Yes, it's refreshed.

Q. I show you 117 for identification. Will you now

tell us who gave you the invoices which appear under that exhibit number (handing)? A. (Examining) The ones marked "Deeb" I got from Mr. Deeb, and the ones marked "Fox" I got from a messenger. 1573

Q. Whose messenger? A. Mr. Fox's messenger.

Mr. Siegel: I can't quite hear.

The Court: He said he got the ones marked Deeb from Mr. Deeb and the ones marked Fox he got from a messenger.

Mr. Hart: Mr. Fox's messenger?

The Court: Yes, Mr. Fox's messenger.

1574

Q. Do you recall swearing to the contents of this affidavit at the time you signed it? A. Yes, I do.

Q. Do you recall reading both pages of it? A. When I signed it?

Q. Yes. A. No, I don't; not very well.

Q. Are those your initials on the bottom of the first page of Exhibit 119 for identification? A. (Examining) Yes.

Q. Did you place your initials on the sheet after you read it? A. I don't remember.

Q. Did you read it at all? A. Oh, I looked it over. 1575

By the Court:

Q. Did you read it? A. I looked it over. I didn't read it word by word. I couldn't read it that way when I was up in the O. P. A. office.

Q. Did you swear to it? A. Yes, I swore to it. The only thing I swore to was—

Mr. Hart: I object to what he swore to, if the
1576 Court please.

The Court: Yes, your objection is sustained.

Q. Did you swear to a paper without knowing its contents? A. Well, I know what was going on at the time.

Q. Did you swear to that paper without knowing its contents? A. No, I wouldn't say that.

Q. Then when you swore that that was the truth, you did so swear that that was the truth? A. Yes, it was, but I notice now that it tells me here that I got everything—

1577 Mr. Siegel: I object to that. I haven't seen it.

The Court: The objection is sustained.

By Mr. Rudykoff:

Q. Were the contents of Exhibit 19 for identification the truth at the time you signed it? A. No.

Q. In what regard was it untrue?

Mr. Siegel: If the Court please, I haven't seen this paper—

The Court: The objection is sustained.

1578

Q. Did you read it at the time you signed it? A. Yes.

Q. And did you read it first page by page? A. No.

Mr. Siegel: I object to that. It has already been answered, if the Court please.

The Court: We will allow him to answer it again.

Q. When you put your initials on the first page—when did you put your initials on the first page, after you read it or before? A. I don't remember.

Q. How long were you at the office of the O. P. A.? A. Oh, I was there with five fellows around. 1579

Q. How long were you there? A. I was there for an hour.

The Court: How long?

The Witness: For an hour at least.

The Court: For one hour?

The Witness: And four other days.

Q. Did you sign it immediately after you were questioned? A. I signed it right in front—right in the O. P. A. office, so I could go back to work. 1580

The Court: Did you sign it—

The Witness: Yes, sir.

The Court: (Continuing)—immediately after you were questioned?

The Witness: I don't understand what that question is.

The Court: What part of it don't you understand?

The Witness: When was I questioned? After what questioning do you mean?

The Court: Prior to signing this paper were you asked certain questions? 1581

The Witness: Oh, many times.

Mr. Siegel: I think the confusion arises because he says he was down there more than once.

By Mr. Rudykoff:

Q. On this particular day, the day that you signed this affidavit, August 27, 1946, how long were you at the office before you signed it? A. On that day I was there about an hour. I waited until they wrote this thing up.

Q. Had you been there on a prior day? A. Yes.

1582 Q. When was that? A. Oh, I don't know. A week or so.

Q. Was it the previous day or a couple of days before? A. No, much before, a couple of weeks, or something like that.

Q. And you saw someone, is that correct? A. That's right.

Q. And you were asked certain questions? A. That's right.

Q. And how long were you there at that time? A. Not more than a half an hour.

1583 Q. Were you there on a previous occasion? A. Yes.

Q. And how long before this previous occasion were you there? A. About ten minutes.

Q. How many times were you there altogether? A. About three or four times, but they were at my office many times.

Q. You were there three or four times—that is, at the O. P. A., is that correct? A. That's right.

Q. And that was before August 27, 1946? A. I don't know dates, I'm sorry. I wouldn't remember the dates.

Q. You just saw this affidavit, didn't you? A. That's right.

1584 Q. You have looked at it twice? A. Yes.

Q. And you have seen the date on it, have you not? A. No, I didn't even look at it.

The Court: Look at it again.

(Witness examines paper.)

The Witness: The 27th.

Q. Before that date were you in the office of the O. P. A. three or four times? A. No, I was there two or three times before this day. 1585

Q. And were you at the office thereafter? A. I don't believe so.

Q. So that two or three times before August 27th you attended at the office of the O. P. A.? A. That's right.

Q. And on those prior occasions did you sign any statement? A. No.

Q. Before those occasions did you have representatives at your office? A. Oh, yes.

Q. Were they from the O. P. A.? A. That's right. 1586

Q. And did they see these exhibits which are 117 for identification and 118 for identification? A. I brought these myself to the O. P. A.

Q. We are now speaking of the time when they were at your place of business. A. Yes, they saw them.

Q. And were you asked certain questions at that time? A. Yes.

Q. Did you sign any statement? A. No.

Q. Now, how many times did you see representatives of the O. P. A. prior to the first time that you went to the Office of the O. P. A.? 1587

Mr. Siegel: If your Honor please, I would like to object to this line of questioning as not being binding upon the defendant Deeb.

The Court: I will sustain the objection.

Q. On this occasion that you were there you had been there three times altogether, is that correct? A. About three times. I don't remember if it was two or three.

Q. Between the time previous to August 27th and the

time that you attended on August 27th, there elapsed a few
1588 days to a week, is that correct? A. Would you repeat that, please?

Q. How much time elapsed between August 27th, the time you signed this affidavit— A. Yes.

Q. (Continuing)—and your previous visit to the U. F. A.? A. Oh, I don't know. Possibly a week. Possibly, I'm not sure. I don't know.

Q. Very well, at that time, that prior occasion, which was one week before August 27th, you made a statement, did you not?

1589 Mr. Siegel: I object again to this questioning here of the witness. It is not binding on the defendant Deeb.

The Court: I will sustain the objection. I think you should come now to the substance of your examination.

Q. Did you state that you were the owner of J. F. Keats—

Mr. Siegel: I object to this question, upon the ground—

The Court: I sustain the objection.

1590 Were you asked whether you were the owner of J. F. Keats?

Mr. Hart: If the Court please, may I respectfully object to your Honor's question upon the ground that no matter what he was asked, no matter what conversation he had, if it was not in the presence of these defendants, or either of them, it certainly is not admissible as hearsay.

Mr. Siegel: And I join in that objection.

The Court: The objection should be sustained.
Were you the proprietor of J. F. Keats? 1591
The Witness: Yes, I was.

Q. Did you make a statement voluntarily?

Mr. Siegel: I object to the form of the question as not binding on the defendant.

The Court: Objection sustained. Ask him as to the substance.

Q. Did you see a list of transactions? A. I don't know what you mean. 1592
Q. On August 27th did you see a list of transactions?

Mr. Siegel: I object to the form of that question as not binding on the defendant, what transactions he may have seen or what list he saw. He is again testifying to something that took place outside of the presence of the defendant.

The Court: The objection is sustained.

Mr. Hart: Double hearsay.

The Court: Yes. I suggest now that you proceed with your exhibits and show them to this witness, exhibit by exhibit, that you have and intend to offer 1593 in evidence, and ask him concerning those exhibits.

Q. With regard to Exhibit 117 for identification, I show you June 8, 1945 invoice of L. A. Fox. When did you get that invoice (handing)? A. (Examining) On June 8th.
Q. At that time did you issue a check? A. I imagine so. I issued a check.

The Court: Did you issue a check for that particular one?

The Witness: Well, I don't remember the exact
1594 day, your Honor. If it is June 8th—

The Court: You may be able to refresh his recollection by showing him the check.

Q. I show you a check which is part of 118 for identification. Did you issue that check in payment of the invoice, which is part— A. That's right.

Q. (Continuing)—of 117 for identification? A. That's right, the day after.

Q. The check is dated June 9th? A. The next day, June 9th.

1595 Q. And the invoice is dated what day? A. June 8th.

Q. Who did you see on June 8th? A. Let me see whose bill it is. This was given to a messenger.

The Court: When you say "this," you mean the check?

The Witness: The bills were brought, your Honor, by a messenger the next day. The messenger came for the check when he knew the goods were coming in. That's the way it worked.

Q. A messenger of whom? A. Of L. A. Fox.

1596 Q. What was this messenger's name? A. His name? George.

Q. What did he look like? A. A tall fellow with a mustache.

Q. Was he light? A. No, not so light.

Q. About your color? A. No, I don't know, if I am dark.

Q. This messenger came from whom? A. From L. A. Fox.

Q. And did you have a talk with L. A. Fox prior to that time? A. I saw L. A. Fox. 1597

Mr. Siegel: I object to any conversation as not binding on the defendant.

The Court: Objection overruled.

Mr. Siegel: Exception.

Q. Did you have a talk with L. A. Fox? A. Yes, I did. I had a talk with him first when I decided to buy goods from him.

Q. Did you see him before you received this invoice? A. Well, now, I don't know whether this is the first one or not. If that is the first one then I did see him before that. 1598

Q. You have a series of invoices which are in the name of L. A. Fox, isn't that so? A. That's right.

Q. Did you see an individual that you knew as L. A. Fox in connection with each of those invoices? A. Yes.

Q. Where did you get in touch with him? A. I didn't.

Q. To whom did you deliver the checks? A. To a messenger. I would give a check to anyone, Mr. Rudykoff.

Q. Who showed you a sample of the merchandise? A. There was no necessity of a sample; I knew it by number.

Q. Who gave you the number? A. The first time it was brought to my attention they gave me a number and that's what I bought. At that time you bought anything. 1599

The Court: Who brought L. A. Fox to you?

The Witness: I heard about L. A. Fox around the Fifth Avenue section there, your Honor, and then I decided to locate him when I hear they have merchandise.

Q. Where did you locate him? A. He came to see me
1600 once and from that point on I didn't see him any more, a messenger came each time.

By the Court:

Q. Where did you locate L. A. Fox? A. He located me. He came to my office. I just put the word around I would like to see him.

Q. When he came to your office, did he come alone or was— A. He was all alone.

Q. How many times did he come to your office? A. Just
1601 once.

By Mr. Rudykoff:

Q. Were there times when you received the merchandise before you made payment? A. No.

Q. Did you always pay in advance? A. No, not always paid in advance.

Q. What were the arrangements so far as payment? A. Mr. Rudykoff, I don't know whether you knew the situation during the war with textiles, but at that time—

Q. What were the arrangements—

1602

The Court: You were asked a simple question.

The Witness: I am trying to answer it, your Honor.

The Court: Did you pay before delivery?

The Witness: No, before delivery. Sometimes, yes.

The Court: That is all you were asked. Pay attention to the question and take your time and then answer as best as you can.

The Witness: All right.

Q. You were paying in advance of delivery, is that correct? A. Sometimes, yes. 1603

Q. Well, was that true sometimes or all the time or just what was your arrangement? Did you have a specific arrangement? A. The arrangement was this: when they brought me in a bill and I was supposed to get so many cases of goods, if they asked for a check at that time and if I was there, I gave him a check. If I wasn't there at the time, they came back and got a check. Sometimes the goods came in before they got paid, which never happened anyway.

Q. You have made mention of "they." Who were the "they"? A. What do you mean, "they"? 1604

Q. You say, "they" sent you goods— A. Oh, that is a matter of speech.

Q. Who did you have reference to? A. It is only a matter of speech.

Q. Who did you have reference to? A. To Fox.

Q. Did you ever telephone to him? A. No.

Q. Did he ever telephone to you? A. No.

Q. You saw Fox on one occasion? A. That's all.

Q. And as a result of that talk you received the various items of merchandise described in the invoices under the name of Fox? A. That's right.

Q. And on that occasion what was your talk—I will withdraw that. What were your talks with Deeb in connection with this merchandise? A. There wasn't much to talk. 1605

Q. How many times did you see Deeb? A. I know the man since I am a young fellow. I know him all my life.

By the Court:

Q. How many years did you know him? A. I don't know, fifteen or twenty years.

Q. Are you friendly with him? A. Yes.

1606 Q. In a business way or a social way? A. Socially I know him a long time, your Honor.

Q. Socially as well as business? A. That's so.

By Mr. Rudykoff:

Q. Have you seen him lately? A. Well, yes.

Q. Did you discuss the case with him? A. No.

Q. You never discussed it at all? A. Absolutely not.

Q. Are these checks under 118 for identification checks in payment of the invoices which are 117 for identification?

1607 A. If you say so, Mr. Rudykoff—

The Court: Look and see, and then say if they are.

The Witness: Yes, these are all my checks.

Q. Are they in payment of the invoices under 117 for identification? A. Yes, yes, they are.

Q. Did you receive the merchandise described in 117 for identification? A. Yes.

Q. Did you check the merchandise to see that the merchandise was received? A. Yes, it was checked. I mean I didn't open each case at the time.

1608 Q. Did you check the case numbers? A. I checked the case numbers.

Q. There are case numbers on the invoices, aren't there? A. Yes, that's right.

Mr. Rudykoff: I offer 117 for identification and 118 for identification in evidence.

(Papers are handed to Mr. Hart.)

Q. When is the last time you saw Mr. Deeb? A. A week or so ago. 1609

The Court: I suggest you let counsel examine these exhibits first and then you may proceed.

Mr. Rudykoff: Very well, sir.

Mr. Siegel: I will object to any of these exhibits here that pertain to a Mr. Fox on the ground they are not binding upon the defendant Deeb.

Mr. Hart: I object to all of them, if the Court please, on the grounds stated with respect to the other exhibits.

The Court: Are these papers, these invoices in Exhibit 117, part of your office records? 1610

The Witness: Oh, yes, one hundred percent.

The Court: And they are part of the records kept by you in the regular conduct of your business?

The Witness: Absolutely.

The Court: The objections are overruled and the exhibits are received in evidence.

(Marked Government's Exhibits 117 and 118, in evidence.)

Mr. Siegel: Has your Honor ruled on my objection? 1611

The Court: Yes, your objection is overruled.

Q. I direct your attention to the second page of the affidavit dated August 27th. Does that consist of two paragraphs in typewriting? A. (Examining) Yes, it does.

Q. And then there is some handwriting. Is that in your hand? A. That's right. I wrote that. They asked me to write that.

Q. Did you write it? A. Yes.

1612

Mr. Siegel: I will object, if your Honor please, as to any transactions he had with an agency as not binding on the defendant.

The Court: Your objection is sustained at this time. You may ask him specific questions as to these transactions that you claim occurred.

Q. You claim you saw Mr. Deeb about a week ago? A. That's right.

Q. You say at that time you did not discuss this case with him? A. No, sir.

1613

Q. About how many times have you seen him prior to that time? A. Oh, I see him on and off.

Q. You visit him regularly? A. Oh, he passes my office once in a while and he drives me down to get my car from the garage.

Q. Where is his place of business? A. Mr. Deeb's place of business?

Q. Yes. A. 1182 Broadway.

Q. Under what name does he do business? A. Ben Crest.

Q. And did he do business under that name in August, 1946? A. I think so.

1614

Q. And did he do business under that name in 1945? A. I don't know.

The Court: How long, to your best recollection?

The Witness: I imagine about a year or a year and a half.

The Court: A year or a year and a half?

The Witness: About.

The Court: That he has been using the name of Len Crest? 1615

The Witness: Yes.

Q. Did you ever visit his place of business at the time that you purchased the merchandise described in 117? A. Yes, I visited him once in a while.

Q. What address did you say that Len Crest was? A. I think it is 1182 Broadway. It might be a different number. It is between 28th and 29th Street, I think.

Q. At what address was Mr. Deeb at the time that you did business with him in 1945? A. I only know him at that address. 1616

Q. Was he at 1133 Broadway? A. I think it was 1182.

Q. You only know of his address at 1182 Broadway? A. That's right.

Q. How long do you know him at that address?

Mr. Siegel: If your Honor pleases, the witness has already answered. I think it is repetitious.

The Court: The objection is overruled.

The Witness: What was the question again?

Q. How long do you know that he has been at that address, 1182 Broadway? A. About a year or a year and a half. I'm not sure how long. 1617

Q. Was he at that address at the time you bought the merchandise from him? A. I don't think so.

Q. Where was he? A. Oh, I'm sorry. He didn't have an office at that time.

Q. Where did you see him? A. He came to my office.

Q. Then you only saw him when he came to your office, is that right? A. That's right, until he opened his office at 1182. I think that's the number, Broadway.

Q. He rendered invoices to you, did he not? A. Yes.

1618 Q. Didn't those invoices contain an address? A. Frankly, I didn't look.

Q. Did you ever attempt to communicate with him? A. I used to see him around if I wanted him.

Q. You did business with him on and off? A. Yes.

Q. From time to time? A. Yes.

Q. And when you wanted to do business with him you sent for him to come to your place of business, is that right?

Mr. Siegel: I object to the form of the question, if your Honor pleases. This is the Government's

1619 witness here and it seems that Mr. Rudykoff is testifying for him.

The Court: I think the form is objectionable at this time.

Mr. Rudykoff: Very well, I will reframe it.

The Court: The objection is sustained.

Q. Do you know anyone at 220 Fifth Avenue? A. Yes, a lot of people.

Q. Did you ever associate Deeb with that address? A. No.

Q. Was he ever at that address? A. He never had an

1620 office there.

Q. Are you sure? A. I am pretty positive.

The Court: Did you ever go to see him at that address?

The Witness: 220? No.

The Court: Did you ever communicate with him at that address, 220 Fifth Avenue?

The Witness: No.

Q. Did you ever try to reach him by telephone? A. Mr. Rudykoff, if I wanted to see him I would go and have lunch, and he was there. 1621

Q. Where did you have lunch? A. I mean I have lunch in my neighborhood. Certain places most people go to.

Q. Where did you meet him? A. In a Syrian restaurant.

Q. What was the name of the restaurant? A. The Bagdad Restaurant.

Q. Where was that located? A. 28th Street between Fifth and Sixth.

Q. Is that where you usually met him? A. No, but if I wanted to find him, that's where I could find him. There's a lot of restaurants you could find people there. 1622

The Court: Did you know his home address?

The Witness: No, I don't even know it now, your Honor.

The Court: And if you wanted to get in touch with him the only way you could do that was to go around and look for him at various restaurants?

The Witness: There was no hardship in those days to find a person.

Q. I direct your attention to June 10, 1945 invoice in the name of Albert Deeb which is part of 117 in evidence. Did you see the address 220 Fifth Avenue? A. I beg your pardon? 1623

Q. Do you see the address 220 Fifth Avenue? A. Oh, yes.

Q. Do you now want to change your answer? A. Absolutely not.

Q. Does that address mean anything to you? A. It means that I know that building very well.

ground that they are not in any way related to the
1666 defendant Deeb.

The Court: Objection overruled.

Mr. Hart: Same objection on behalf of the other defendants as made to the previous exhibits.

The Court: Objection overruled.

(Marked Government's Exhibits 120 to 127 inclusive, in evidence.)

Q. I direct your attention, Mr. Sandhaus, to a letter of Daisart attached to 126 in evidence, dated July 23, 1945,
1667 and ask you if the roll numbers and yardages appearing on that sheet were related to the invoices which are attached, Numbers 353 and 403, part of 126 in evidence? A. Well, this paper here, you want to know if it applied to these invoices, is that it?

Q. Yes. A. Offhand it is hard to say if it does, because there is no—I can't find any—

Q. You cannot say? A. No, I cannot say, but it doesn't correspond with the yards. These are rolls.

Mr. Rudykoff: You may inquire.

1668 *Cross Examination by Mr. Hart:*

Q. When did you visit the Daisart place of business? A. The exact date I don't remember. I don't remember the exact date. I visited him some time around that date, when I started to buy from Mr. Smith.

Q. Were you inside the plant? A. Yes.

Q. And did Smith inform you at that time that he had no more orders on hand, that the war was over? A. Yes, at

Q. Was Deeb at that address? A. No, I don't remem-
1624 ber. He was not there and I never knew that he had an office there.

Q. Then that address is false, is that correct?

Mr. Siegel: Objected to.

Mr. Hart: I object to that.

The Court: Objection sustained.

Mr. Siegel: And I move to strike it out.

The Court: Yes.

Q. Do you see that telephone number (indicating)? A.
1625 Yes.

Q. What is it? A. Chelsea 2-7337.

Q. Did you ever try to reach him at that number? A. No.

Q. During all the time that you knew him you never had attempted to reach him at that address? A. Not while I was doing business with him, I didn't have to.

Q. During that time he told you that he had no office, is that correct? A. No, he didn't tell me that. I assumed it. I knew he didn't have any office until he opened the office called Len Crest.

Q. Did he tell you that he did have an office or did not
1626 have an office? A. No, he did not say that he either did or he didn't.

The Court: Did he tell you how you could communicate with him if you wanted him?

The Witness: It was easy for me to find him.

Q. No, did he tell you how you could communicate with him if you wanted him? A. No, he didn't.

that time Mr. Smith told me he was going out of business and he was liquidating and he had goods to sell. 1669

Q. Did you see any machines working in his plant at that time? A. No.

Q. This was after the European war had ended? A. No—

The Court: What was the date of the first invoice?

Q. Did you visit Daisart's place of business before the first purchase or after? A. No, that was the first time I started to see Mr. Smith, on the day of the purchase of 1670 these bills, of these goods.

The Court: The date of the first purchase is what? What is the date of the first purchase?

The Witness: I don't know.

The Court: Look at the paper and see if you can refresh your recollection.

The Witness: Is that July 9th? I don't know if you got them in order.

Mr. Rudykoff: You can just check that.

The Witness: July 9th, according to these in- 1671 voices, 1945.

The Court: All right. Mr. Hart, any more questions?

Mr. Hart: Can we agree when V-J Day was?

Mr. Rudykoff: I think we can do it at some other time.

The Court: We will take judicial notice of it and we can look up the accurate date.

Q. Does the address 1133 Broadway mean anything to you? A. Maybe that's the address of his office. It's either 1133 or 1182, I'm not sure, either one. 1627

Q. Did you ever try to reach him by telephone? A. When he was under Len Crest, was that the address of Len Crest; Mr. Rudykoff?

Q. I will ask the questions and you answer them. A. I am confused with that number. If you will help me out.

Q. Do you recall the address 1133 Broadway in any way? A. I have in my mind 1182, that's all I know.

Q. Did you ever try to reach anyone or write to anyone at 1133 Broadway? A. I don't understand his question, your Honor. 1628

The Court: The question is plain. I suppose you mean to confine it to Deeb, do you?

Mr. Rudykoff: That is all.

The Court: Did you try to communicate with anybody at 1133 Broadway or did you have any business with anybody in that building?

The Witness: Well, I had business with Len Crest and I think the number was 1182. If it's 1133, then I am lying here.

The Court: You are giving us your best recollection. 1629

The Witness: That's why I am asking him if that's the correct address.

The Court: You are giving your best recollection.

The Witness: That's right.

The Court: What is your best recollection as to whether or not you ever had any business with anybody at 1132 Broadway?

The Witness: No, if Len Crest is 1182.

By Mr. Hart:

1672 Q. How many times were you over to Smith's place of business? A. Not many times. I would say that most of the samples came through the mail which I received.

Q. But you were over there after the first time? A. Oh, yes.

Q. Do you know on which occasion you had this conversation when he told you he was going out of business and that he had no more orders or that he was liquidating? A. It's hard to say whether it was the first time or the second one.

1673 Q. It is hard to say whether it was the first one or the last occasion? A. Yes.

Mr. Hart: That is all.

Cross Examination by Mr. Siegel:

Q. You never had any transaction or business with Mr. Deeb, did you? A. No.

Q. You don't even know Mr. Deeb? A. No, I don't know Mr. Deeb.

Mr. Siegel: That is all.

1674 Mr. Rudykoff: Thank you, Mr. Sandhaus.

(Witness excused.)

Mr. Rudykoff: I have a very short witness.

The Court: Well, if it is a short witness I would like to hear him tonight because I do not want to hold a session on Saturday if it possibly could be avoided and I want to finish this case next week. I will ask the jury to be a little indulgent and hear one more witness.

By Mr. Rudykoff:

1630

Q. I show you the L. A. Fox invoices. Does the address 1133 Broadway appear there (handing)? A. (Examining) Yes, it does.

Q. Well now, is your memory refreshed as to whether you had any business in that building? A. No, I still say, Mr. Rudykoff, why don't you help me out?

The Court: Answer the questions. Did you at any time have business at 1133 Broadway either with Mr. Deeb or a Fox, or anybody else?

1631

The Witness: No.

The Court: Did you ever go to 1133 Broadway to see Fox or to see Deeb?

The Witness: No, your Honor. If the other number is 1182, I don't remember it.

Q. You received the invoice from Deeb dated June 10, 1945, did you not? A. Yes.

Q. And you noticed the telephone number? A. Yes.

Q. And you also noticed the address? A. Yes.

Q. That was one occasion when you did notice the writing, wasn't it? A. Well, you just told me to look at it.

1632

Q. Did you notice that address before this day? A. No.

Q. You never saw that address before? A. I never looked at it.

Mr. Siegel: I object to the question. I object to the form of the question, the way the District Attorney is asking questions of his own witness.

The Court: The objection is sustained.

Mr. Rudykoff: Very well, I will withdraw it.

BERTRAM BRESSLER, called as a witness on behalf of the Government, being first duly sworn, testified as follows: 1675

Direct Examination by Mr. Rudykoff:

Q. Mr. Bressler, are you connected with Allied Textile Printers, Inc.? A. Yes, sir.

Q. In what capacity? A. I am in charge of the receivables, sales and billing.

Q. I direct your attention to Exhibit 126 in evidence, the last page thereof, and I ask you to examine that page which is marked at the top, "DTN 1914 56-inch cotton twill 25,000 yards," for the purpose of verifying whether the roll numbers appearing on the previous page, which is dated July 23, 1945, were checked in some way by your plant (handing)? A. (Examining) Yes. 1676

Q. Can you answer this briefly: Do the roll numbers or were the yardages which appear on the Daisart letterhead dated July 23, 1945, checked and substantially found to be correct? A. Yes, they were.

Q. And after your receipt of these roll numbers, did you thereafter assign new numbers? A. That is correct.

Q. Is that the usual and customary practice of printers? A. It is the practice of printers not to necessarily assign new numbers, but in this particular case, where there are large yardages and the customer may want smaller yardages, then it becomes necessary to have the yardages as shown in this letter, lose their identity because of the fact that they would be cut up. 1677

Q. And what happened then was that the numbers appearing in letter of July 23, 1945 became other numbers, is that it? A. That is correct.

The Court: Did you ever know Fox at the address and the telephone number given on that in- 1633
voice?

The Witness: No.

The Court: Did you ever call Deeb—

The Witness: No.

The Court: At the telephone number given on the invoice of his?

The Witness: No.

Q. Did you ever have a talk with Deeb about this address 220 Fifth Avenue? A. No.

Q. Did you ask him in substance whether that was his 1634
office? A. No, it didn't concern me whether it was or wasn't.

Mr. Siegel: If the Court please, if the purpose of this is to show that Deeb did not have an office—

The Court: There is no question before the Court at this time.

Mr. Siegel: I was going to say that we will produce the people from 220 Fifth Avenue—

The Court: I suggest you do that at the proper time. There is no question now before the Court.

Mr. Siegel: All right. 1635

Mr. Rudykoff: May I at this time read the exhibits?

The Court: Yes.

Mr. Rudykoff: Exhibit 117 in evidence, invoice of L. A. Fox, telephone Watkins 9-3868, 1133 Broadway, to J. F. Keats, one lot of cotton DC cloth at 45 cents a yard, 9,507¼ yards, $4,278.26.

Exhibit 118 in evidence is a check for that amount dated June 9, 1945, payable to L. A. Fox, endorsed

Q. Are those numbers indicated on the sheet, the white
1678 sheet attached to the same exhibit? A. No, there are no numbers on these white sheets; they are merely yardages.

Q. Are those the yardages in which the rolls received by you were converted? A. That is correct.

Q. And the sum total of the yardages appearing on the white sheet were the equivalent to the sum total of the yardages appearing on the yellow sheet dated July 23, 1945, with the difference which is incident to processing, is that correct? A. That is correct.

1679 Q. And in that case was the yardage reduced or increased by reason of the processing? A. Yardage would normally be decreased.

Mr. Rudykoff: You may inquire.

Cross Examination by Mr. Hart:

Q. Was it decreased? A. Yes, sir, it was.

Q. And then the yardage is not the same on the figures that you have? A. No. In the normal process of dyeing or printing, whichever may be the case, there is a certain
1680 amount of allowance for shrinkage.

Q. And the figures are different? A. That is correct.

Q. Did you personally check that? A. The figures?

Q. Yes. A. No, I didn't personally check them. They are checked in our office against lot sheets which are made up to see whether there are over excess shrinkages.

Q. What is the nature of your position with the concern? A. I am in charge of the billing, the pricing of invoices and the accounts receivable, receiving checks from customers and so forth.

by L. A. Fox, and underneath the written endorse-
1636 ment appears the endorsement of Dairsart Sports-
wear, Inc. The check was deposited in the Fidelity
Union Trust Company.

The second item in Exhibit 117 is an invoice of Albert J. Deeb, 220 Fifth Avenue, dated May 26, 1945, to J. F. Keats for one lot special cotton D/ cloth 12,021 3/4 yards at 45 cents a yard, $5,409.79, listing four case numbers and yards alongside of each listing.

Exhibit 118 in evidence contains checks in that amount, $5,409.79, dated May 25, 1945, payable to
1637 Albert J. Deeb for deposit, and deposited in the West Hartford Trust Company.

Exhibit 117 contains an invoice dated June 10, 1945, Albert J. Deeb to J. F. Keats, one lot special cotton extra wide at 45 cents per yard, 12,349¼ yards, $5,557.16, with the listing of four cases and yardages.

Exhibit 118 in evidence contains a check dated June 12, 1945 in the same amount, and that is, $5,557.16, payable to Albert J. Deeb, endorsed by him, deposited in the same bank, that is, the West Hartford Trust Company.

1638 Exhibit 117, an invoice of L. A. Fox dated June 13, 1945 to J. F. Keats—

Mr. Hart: Mr. Rudykoff, would you please be careful with those exhibits so they are not exhibited to the jury?

The Court: Be extremely careful of that, and if the jury did see any of the pencil notations they are instructed to disregard them entirely.

Mr. Rudykoff: I have attempted to be careful.

The Court: I know that.

Q. And you have people there who receive merchandise and ship merchandise, is that correct? A. That is correct. 1681

Q. And you personally do not receive or check what is received but you have other subordinates to do that, do you? A. That is correct.

Q. And you did not check this merchandise when it came in, did you, personally? A. No, sir.

Q. You did not check the lot numbers or the bale numbers? A. No, sir.

Q. But you had someone in your employ who did that, is that right? A. That is so.

Q. And that person is not here? A. No, sir. 1682

Redirect Examination by Mr. Rudykoff:

Q. And what you have described is done in the regular course of your business? A. That is correct.

Q. With regard to that yellow sheet, was that part of the file of Allied? A. That is correct.

Q. And with regard to the last sheet, the white sheet, was that part of the file of Allied? A. That is correct.

Mr. Rudykoff: That is all.

The Court: Was this offered in evidence? 1683

Mr. Rudykoff: It is in evidence.

The Court: What is the exhibit number?

Mr. Rudykoff: Exhibit 126.

The Court: Any other questions?

Mr. Hart: No.

The Court: All right, thank you very much.

(Witness excused.)

Mr. Hart: I do not say it is intentional, but inadvertently you hold them up in the air. 1639

The Court: All right.

Mr. Rudykoff: (Continuing) At 45 cents per yard, 7,548 yards, $3,396.60, listing three cases containing specified yardages.

Exhibit 118 contains a check in the same amount, $3,396.60, payable to L. A. Fox, dated June 14, 1945, and endorsed L. A. Fox, stamped "For deposit in Royal Industrial Bank, Philip Paver."

Exhibit 117 contains an invoice dated June 13, 1945 to J. F. Keats on the letterhead of L. A. Fox, one lot cotton DC cloth at 45 cents, 7,548, $3,296.60. 1640

Exhibit 118 contains a check in that amount dated June 14, 1945, payable to L. A. Fox and endorsed L. A. Fox and Philip Paver.

Exhibit 117 contains an invoice of L. A. Fox dated June 13, 1945 to J. F. Keats, one lot of cotton cloth at 45 cents a yard, 7,603 yards, $3,421.35.

Exhibit 118 contains a check in that amount dated June 14, 1945, payable to L. A. Fox and endorsed by L. A. Fox and underneath L. A. Fox is the endorsement of Daisart Sportswear, Inc., and the check was deposited in the Fidelity Union Trust Company.

Exhibit 117 contains an invoice of L. A. Fox, June 12, 1945, to J. F. Keats for 12,602¼ yards of cotton DC cloth at 45 cents, $5,671.01. 1641

118 contains the check in that amount dated June 12, 1945, payable to L. A. Fox, endorsed by Fox and Philip Paver.

Exhibit 117 contains an invoice of L. A. Fox dated June 12, 1945 to J. F. Keats for one lot of cotton cloth, 12,507 yards, $5,628.15.

118 contains a check for that amount dated June
1642 12, 1945 payable to L. A. Fox, endorsed by L. A. Fox and Philip Paver.

Exhibit 117 contains an invoice of L. A. Fox dated June 8, 1945 to J. F. Keats for one lot of combed cotton DC cloth at 45 cents per yard, 12,106 3/4 yards, $5,448.04.

Exhibit 118 contains a check for the same amount, payable to L. A. Fox, dated June 9, 1945 and endorsed by L. A. Fox as well as Daisart Sportswear, Inc., and deposited to the Fidelity Union Trust Company.

1643

Q. Did you ever hear of Daisart Sportswear? A. No, sir.

Q. Is this the first time you heard of the name? A. I noticed it on the card that I got from you last week.

Q. Prior to that time you never heard of it? A. Never heard of it.

Q. Did you ever examine your checks? A. No, sir.

Q. Yours is a one man business, is it not? A. I wouldn't say that.

Q. You are the sole owner? A. That's right.

Q. You do all the buying yourself? A. Most of it.

1644 Q. Does anyone else do the buying? A. I have a manager in my office who does some buying once in a while.

Q. Does he buy cotton goods? A. If it was cheap enough he would.

Q. You mean to say that he has authority to buy cotton goods? A. Yes, sir.

Q. What did you mean, "if it was cheap enough"? A. If he could get it at a good price and I could use it, well, I will buy it.

Q. Who does the buying, you or the man? A. We both buy.

Q. Was that true in 1945? A. He was in the army at that time. 1645

Q. In 1945 were you the only one who did the buying? A. Yes, sir.

Q. Did you employ anyone else? A. No, sir.

Q. What kind of an office do you have? A. A regular office I've got.

By the Court:

Q. How large an office? A. Well, I am trying to explain.

Q. Is it one room? A. No, I occupy my own building there. I use three floors. 1646

Q. You have three floors? A. Sure.

Q. How many people do you employ? A. About fifty people there.

By Mr. Rudykoff:

Q. What kind of work do you do? A. We manufacture; we have machinery.

Q. Do you have machinery? A. That's right.

Q. And how many people do you employ in the office? A. Well, right now or do you want to know then?

Q. In 1945. A. I was the only one at that time. 1647

Q. With regard to checks in 1945, who made the checks? A. I made the checks out.

Q. Who kept the books? A. I had a bookkeeper.

By the Court:

Q. I thought you said you were the only one in the office? A. Yes, I did all this buying. I had a gi.. that kept my books.

Q. You had a bookkeeper? A. Yes, sure.

Q. You keep a regular set of books? A. That's right,
1648 absolutely.

Q. Did you examine the cancelled vouchers when they were returned? A. No, sir.

Q. Did you ever see the endorsements? A. No.

By Mr. Rudykoff:

Q. Did you ever have any talk with Deeb about Daisart? A. No, I don't even know anything about Daisart.

Q. Did you ever ask him where he got the goods? A. No.

1649 Q. Weren't you curious?

Mr. Siegel: I object to the form of the question.

The Court: The objection is sustained.

Mr. Rudykoff: That is all, you may inquire.

Cross Examination by Mr. Siegel:

Q. Mr. Witness, do you—

The Court: Mr. Keats.

Q. Mr. Keats, in trying to refresh your recollection with
1650 reference to the address 220 Fifth Avenue, does the name Borab Brothers indicate anything in your mind? A. I know them for twenty years.

Q. And did you know that Mr. Deeb had part of their office space at 220 Fifth Avenue? A. No, I didn't.

Q. In 1945? A. No, sir.

Q. And that the number indicated on his stationery is the number of that office, the telephone number on that stationery? A. I don't remember.

Q. Is the number at that office? A. In Borab Brothers.

Q. Yes. A. It might be their number.

1651

The Court: What is Borab Brothers?

The Witness: They are importers of fancy linens.

Q. Do you know that they have office space at 220 Fifth Avenue? A. Yes, they have.

Mr. Siegel: That is all.

Mr. Hart: I just want to ask one question.

The Court: Ask your question, Mr. Hart.

Mr. Hart: Do you know Mr. Smith?

The Witness: No.

1652

Redirect Examination by Mr. Rudykoff:

Q. What is the telephone number of Borab Brothers? A. I don't know.

Q. What did you mean when you said that it might be the telephone number of Borab Brothers? A. That is what that gentleman asked me, would that be their telephone number? I said it might be.

The Court: You do not know whether it is or not?

The Witness: I don't know.

1653

Q. Did you ever call Borab Brothers? A. I called them. I have the girl call up many times. I've got the number in the book in my office.

Q. Did you ever call them? A. Sometimes I do.

Q. Can you tell us the exchange?

Mr. Siegel: In 1945.

A. Chelsea, I think.

Q. Chelsea what? A. Oh, I don't know.

The Court: Did you know their number in 1945?

1654 The Witness: No, I've got it in my book in the office.

Mr. Hart: Could we have a concession as to whether or not Chelsea is shown on the bill that the District Attorney holds?

The Court: The bill speaks for itself. Are there any other questions?

Mr. Hart: Could we have it noted on the record, for the purpose of continuity, that the United States Attorney was looking at a bill?

The Court: The record speaks for itself. What

1655 does the bill show?

Mr. Rudykoff: Chelsea.

The Court: What is the full telephone number?

Mr. Rudykoff: Chelsea 2-7337.

The Witness: That is their number.

Q. That is the number of Borab Brothers? A. That sounds like it.

The Court: Any other questions?

Mr. Rudykoff: No.

The Court: All right, that is all.

1656

(Witness excused.)

ABE SANDHAUS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

Q. Mr. Sandhaus, what is your business or occupation? A. Jobber in piece goods.

Q. How long have you been in that business? A. For myself? 1657

Q. Yes. A. A period of, I would say, about five years.

Q. And during 1945 did you buy some finished piece goods from Daisart? A. I did.

Q. Did you see and speak to Mr. Smith? A. I did.

Q. Do you see him in Court? A. I do.

Q. Will you point to him? A. I beg your pardon?

Q. Will you point to him? A. Right there (indicating).

Mr. Rudykoff: Indicating the defendant Smith.

Q. Where did you see him? A. I saw him at his place 1658
of business.

Q. Where was that? A. It was on Central Avenue.

Q. Where is Central Avenue? A. In Newark, New Jersey.

Q. Did you have a talk with him? A. Yes.

Q. And can you tell us approximately when you saw him for the first time? A. Well, approximately the first time I saw Mr. Smith was, I had the first transaction I had with him on the goods.

Q. Would that be shown by certain documents which are kept by you? A. Yes, I think they could. 1659

Q. About how many transactions did you have with Mr. Smith in all? A. I would say I had practically all of them —all the goods I bought from him.

Q. When you would buy goods from Daisart you saw Smith, is that it? A. Yes.

(Papers are marked Government's Exhibits 120 and 121 for identification.)

Q. Would you please look at Exhibits 120 and 121 for
1660 identification and tell us whether they relate to a purchase of finished piece goods from Daisart (indicating)? A. (Examining) They do.

Q. And are these documents kept by you in the regular course of your business? A. Yes, sir.

Q. What kind of goods was involved? A. Offhand I can't tell what kind of goods it is. It could be rayon or cotton. From these I couldn't tell what they were.

Q. Did you pay the price which is indicated on the invoice? A. That is right.

1661 Q. What were your terms? How did you pay? A. Net cash. And some times I gave him a check for the goods on account.

Q. Where were the goods shipped? A. Most of the goods came into my place.

Q. When they were shipped to your place who paid for the trucking? A. I did. It was paid by us.

Q. When they came to your place did you check the goods? A. Yes.

Q. And did you verify whether or not the goods were the same as the goods described in the invoice? A. As sample given, that's right.

1662 Q. Did you check the yardage? A. Yes.

Q. Did you check the bale numbers and case numbers? A. Yes, where there was—where there were bale numbers, we did.

(Papers are marked Government's Exhibits 122 to 126 for identification.)

Q. Will you please look at Exhibits 122 to 126 for identification and tell us if they represent documents relating

to purchases made by you from Daisart (handing)? A. (Examining) Yes, they do. 1663

Q. And were these documents, as well as the documents in Exhibit 120 for identification, kept by you in the regular course of your business? A. Yes, sir.

Q. And in connection with each of those transactions did you see and speak to Mr. Smith? A. Well, in some transactions the samples came in—they were mailed to me, and every one I consummated, the closing of it, I closed with Mr. Smith.

(Paper is marked Government's Exhibit 127, for identification.) 1664

Q. I show you Exhibit 127 for identification and ask you if those are checks which were issued by you in payment of the invoices represented by the other exhibits shown to you (handing)? A. (Examining) Yes, these are my checks.

Mr. Rudykoff: I offer 120 to 127, inclusive, for identification in evidence.

(Exhibits are handed to Mr. Hart.) 1665

Q. While we are waiting, did you in connection with one of the transactions send any material for finishing to Allied Textile Printers? A. No.

Mr. Rudykoff: I now offer 120 to 127 for identification in evidence.

Mr. Siegel: I object to the introduction of these exhibits on behalf of the defendant Mr. Deeb on the

1684 The Court: We will adjourn until Monday morning at 10:15. I have a matter on at ten o'clock. I am going to try to see if we can complete the evidence in this case on Monday. I hope we will not have to have evening sessions, but I will try to avoid it.

You are excused then until Monday at 10:15. The same admonition I have always given to you still holds.

(The jury was excused and left the Court Room.)

1685 The Court: One of the jurors wants to ask a question. I will make a record of it and if counsel should be advised of what transpires, I will advise you.

The Juror: I won't ask the question then, if it is improper.

The Court: You are Juror No. what?

The Juror: I am the first alternate.

The Court: The first alternate juror told me that he wanted to approach me to ask me a question. I brought him into the room and after doing so he tells me upon reconsideration that he does not wish to ask the question.

1686 Mr. Hart: All this was in the presence of counsel.

The Court: Yes.

(Adjourned to 10:15 A. M. November 24, 1947.)

November 24, 1947, 10:15 A.M. 1687

Trial Resumed.

ARNOLD LAKS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

Q. Mr. Laks, what is your business? A. I am a bank clerk.

Q. By whom are you employed? A. Public National 1688
Bank & Trust Company.

Q. Have you brought certain records pursuant to subpoena? A. I have.

Q. Did your bank have an account in the name of Albert J. Deeb? A. It did.

(Papers are marked Government's Exhibits 128 and 129, for identification.)

Q. I show you 129 and 128 for identification, and ask you if those are the signature cards relating to the accounts 1689
of Albert J. Deeb individually? A. These are his personal account. They are his personal accounts.

(Papers are marked Government's Exhibit 130, for identification.)

Q. I show you Exhibit 130 for identification, and ask you whether Albert J. Deeb was identified with that particular account (handing)? A. (Examining) He was.

1690 Q. Are these cards kept in the regular course of the business of the bank? A. Yes, they are signature cards.

Q. Were they produced from the files of the bank? A. Yes.

Mr. Rudykoff: I offer them in evidence.

Mr. Siegel: If your Honor pleases, I have no objection to Exhibits 128 and 129, but I object to 130 upon the ground that I do not think it has any bearing or relevancy to this case.

The Court: May I see the exhibit?

1691 (Exhibit handed to the Court.)

Mr. Rudykoff: The top one, if the Court pleases, is Exhibit 130.

Mr. Siegel: I assume it is only with reference to his signature, Judge?

Mr. Rudykoff: The assumption of counsel is not necessarily so.

The Court: It is received in its entirety.

Mr. Hart: May I object to it upon the ground that it is not binding upon the defendant Smith or Daisart Sportswear, Inc.?

1692 Mr. Rudykoff: I will so stipulate.

Mr. Siegel: That is a separate corporation, Judge, in no way related to the Daisart Sportswear. Therefore it may be prejudicial here—

The Court: You are appearing here only for Deeb, aren't you?

Mr. Siegel: That is correct.

The Court: In the interests of Daisart Sportswear—

Mr. Siegel: That is not the same corporation. That is the point I am making here.

The Court: Your objection is overruled. 1693

Mr. Hart: I understand that the interests of my client have been taken care of by Mr. Rudykoff's stipulation, is that correct?

Mr. Rudykoff: Yes, I will stipulate whatever is contained therein is not to be considered in connection with the defendants Daisart Sportswear, Inc. or Smith.

The Court: All right, the jury are so instructed. They are received in evidence.

(Papers marked Government's Exhibits 128, 129 and 130 in evidence.) 1694

Mr. Rudykoff: You may inquire.

Mr. Siegel: No questions on behalf of the defendant Deeb.

The Court: What branch were these accounts maintained in?

The Witness: Broadway and 24th Street.

The Court: Broadway and 24th Street in Manhattan, New York?

The Witness: Manhattan, New York.

Mr. Rudykoff: Thank you. 1695

(Witness excused.)

Mr. Rudykoff: May I at this time read from Exhibits 128, 129 and 130?

The Court: Yes.

Mr. Rudykoff: Exhibit 128 in evidence is a signature card with relation to the account of Albert J. Deeb. There appears his signature. Below, the

1696 address; 514 16th Street, Brooklyn, New York. Address No. 126 Terrace Place, Brooklyn. That address is stricken in ink. Alongside of the address is the telephone number South 8-0702. Introduced by—employed by National Bellas Hess Company, No. 37 West 26th Street, New York. Date opened, March 27, 1936. Date closed, March 30, 1940.

129 is an account of Albert J. Deeb, business, personal account, address 540 4th Street, Brooklyn, New York. Telephone number, Main 3-8850. Introduced by—"We have two other accounts in which
1697 he is interested." Date opened, September 12, 1945.

Exhibit No. 130 is an account entitled Daisart, Inc. Signatures: Albert J. Deeb, President, 540 4th Street. Corporate resolution on file. Secretary, Emil Hajjar, 540 4th Street, Brooklyn. Below, stamped, "Either signature." Underneath that, "Mail order, table linens. Business: 1182 Broadway." That is the business address. Telephone number, MU-3-8850. Date opened 5/6/47.

The Court: Mr. Rudykoff, would you step up a minute, please, and Mr. Siegel?

1698 (Conference at the Bench outside of the hearing of the Court, and outside of the hearing of the Reporter.)

The Court: When counsel read Exhibit No. 130, which the Court just admitted in evidence, it became apparent that that account was opened on May 6, 1947. That is a date after the dates mentioned in the indictment.

Is that correct; did you read the dates correctly?

Mr. Siegel: That is correct. 1699

Mr. Rudykoff: Yes, that is correct, your Honor.

The Court: I think in view of the fact that that account which appears from Exhibit No. 130 was opened after the late date mentioned in the indictment, it is not competent evidence. I will, therefore, at this time exclude that from evidence and order that Exhibit No. 130 be stricken from the evidence. The objection of counsel to the admission of that evidence is sustained.

I further instruct the jury that in their consideration of the guilt or innocence of these defendants 1700
they are not to consider that exhibit in any way when passing upon the facts in this case. That is Exhibit No. 130.

Mr. Rudykoff: I consent to the ruling of the Court.

Mr. Siegel: And I, at this time, in view of your Honor's ruling, move for a mistrial on behalf of the defendant Deeb on the ground that the fact that it was described and discussed before the jury may constitute prejudice with respect to my client.

The Court: Your motion is denied, and again, 1701
so that there will be no doubt in anybody's mind, particularly the jury's mind, the jury are instructed that as to that exhibit and as to all other exhibits which are excluded from evidence, and the questions which are excluded from the evidence, the jury are not to consider them in any way in determining the guilt or innocence of any of these defendants.

Particularly, you are not to consider that exhibit which was read to you, Exhibit No. 130, in any manner, shape or form.

1702 Mr. Siegel: If your Honor pleases, but do the jury know what 130 was?

Juror No. 2: Yes, we do.

The Court: The jury indicates that they do.

DANIEL STEIN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

1703. Q. Mr. Stein, what is your business? A. Manufacturer of laces and embroideries.

Q. And was that your business in 1944 and 1945? A. (Witness nods head.)

Q. Will you answer instead of shaking your head? A. Yes.

Q. Under what name were you in business? A. Stein-Tobler Company, Inc.

Q. How long has the firm been engaged in business? A. Twenty-four years.

Q. During 1944 and 1945 did you have some transactions with an individual named Wardi? A. Yes.

1704 Q. Is that spelled W-a-r-d-i? A. Yes.

Q. Did you do business in or did you purchase some finished piece goods? A. What is that?

Q. Did you purchase some finished piece goods? A. Yes.

Q. Did those transactions involve the purchase of finished piece goods? A. Yes.

Q. Did you use the goods? A. Yes, sir.

Q. What did you do with them? A. Made trimmings out of them.

Q. Trimmings? A. Yes. 1705

Q. What are trimmings? A. Well, to trim up a dress or a blouse or a piece of underwear.

Q. Did you resell any of that material? A. No, sir.

Mr. Rudykoff: You may inquire.

Mr. Hart: I have no questions.

Mr. Siegel: No questions.

Mr. Rudykoff: Thank you, Mr. Stein.

Mr. Hart: I move to strike out his testimony, if the Court please, on the ground that it is not binding upon the defendants Smith or Daisart. 1706

Mr. Siegel: I make a similar motion on behalf of Deeb. There is no connection.

The Court: The motions are denied at this time.

Mr. Rudykoff: May I at this time read the exhibits relating to Sandhaus, which were introduced on Friday and which have not been read?

Mr. Siegel: Mr. Rudykoff, may I see 126? I did not have a chance to look at it Friday.

(Mr. Rudykoff hands exhibit to Mr. Siegel.) 1707

Mr. Rudykoff: Exhibit 121 in evidence is on the stationery of Daisart Manufacturing Company, 354 Bloomfield Avenue, Montclair, New Jersey, addressed to Sandhaus Fabrics Company, dated July 16, 1945, 14,760 yards CAB at 80 cents, total $11,808.

Exhibit No. 122, on the stationery of Daisart Manufacturing Company, 354 Bloomfield Avenue, Montclair, New Jersey, addressed to Sandhaus Fabrics, dated August 13, 1945, 6,782 3/4 yards, 42-

1708 inch brushed twill at 75 cents per yard, $3,087.06.

Exhibit No. 124, on the stationery of Daisart Manufacturing Co., dated November 2, 1945, addressed to Sandhaus Fabrics, 52,177 yards white stamped "Paid." Underneath that "Ch #1672, $15,000." Alongside of the amount: "A/C." Underneath that, "Ch #1678, $10,000, A/C." "Ch #1687, $11,523.90, total $36,523.90."

Exhibit No. 125, on Daisart Manufacturing Company stationery, dated August 13th, addressed to Sandhaus Fabrics, 8,855 yards of satins at 80 cents

1709 per yard, $7,084. Below, "Paid Ch #1555 A/C $3,500. Ch. #1460, $3,584, total $7,084."

Exhibit 120 in evidence, on the stationery of Daisart Manufacturing Co., September 5, 1945, addressed to Sandhaus Fabrics, 27,873 1/2 yards at 80 cents per yard, $22,298.80. Down below, "Paid A/C Ch #1460, $11,747.40 A/C 1591, $5,000, No. 1596, $5,551.40, total $22,298.80."

Exhibit No. 123, on the stationery of Daisart Manufacturing Co., dated July 9, 1945, addressed to Sandhaus Fabrics, 4,362 yards at 65 cents, $2,735.

1710 .30, paid Check No. 1492.

Mr. Siegel: May I approach the Court?

The Court: Yes.

(Conference at the Bench between Court and counsel not within the hearing of the jury and not within hearing of the Reporter.)

Mr. Rudykoff: Exhibit No. 126 is on the stationery of Daisart Manufacturing Co., dated August 13, 1945, addressed to Sandhaus Fabrics, and is for 11,460 3/4 yards satins at 80 cents per yard, $9-

168.60. Below, Ch #155 A/C $4,500. Ch #1460, $4,668.60, total $9,168.60." 1711

The second item attached to the exhibit is also on the stationery of Daisart Manufacturing Co., dated November 9, 1945, addressed to Sandhaus Fabrics, 24,841 1/8 yards at 75 cents per yard, total $18,630.75. Below is a memorandum of the checks.

The third item is a letter on the stationery of Daisart Sportswear, Inc. "Sportswear" is deleted by a number of horizontal lines drawn through the name. Underneath the heading is "99 Central Avenue, Telephone Mitchell 2-3335, Newark, New Jersey." 1712

The letter, in handwriting, is dated July 23, 1945, addressed to Allied Textile Printers, 1450 Broadway, N. Y. C.

"Gentlemen:

"Novelty Print Division." "Print the following pieces in Pattern No. 810, four color, in four background colors, green 5,000 yards, wine 10,000 yards, blue 10,000 yards, as original sketch."

Then follows a listing of various numbers and yardages. After that is the following: 1713

"Please notify Mr. George Smith at above address before printing, so that he may be there to approve and instruct color combinations."

Down below is, "Daisart, Inc." in writing. Underneath that, "A. J. Deeb."

Exhibit No. 127 consists of the following checks:

Check of Sandhaus dated June 22, 1945, $20,000, payable to Daisart Sportswear, Inc., endorsed by

1714 Daisart Sportswear, Inc., deposited in Fidelity Union Trust Company.

Check dated August 14, 1945, $8,000, payable to Daisart Manufacturing Co. On the back, "Daisart Manufacturing Co." Underneath, "Pay to the order of Fidelity Union Trust Co., Newark, New Jersey, Daisart Sportswear, Inc."

Check dated November 12, 1945, payable to Daisart Manufacturing Co. or George Smith, $11,523.90, and deposited to the account of George Smith in the Fidelity Union Trust Company.

1715 Check dated November 27, 1945, for $10,000, payable to Daisart Manufacturing or George Smith, deposited to the account of George Smith in the Fidelity Union Trust Company.

Check dated November 9, 1945, for $8,630.75, payable to Daisart Manufacturing, or George Smith, deposited to the account of George Smith in the Fidelity Union Trust Company.

Check dated September 7, 1945, $5,551.40, to Daisart Manufacturing or George Smith. Deposited to the account of Daisart Manufacturing Company, George Smith, Proprietor. I withdraw that. It is

1716 endorsed as follows: "Daisart Manufacturing Co., George Smith, Proprietor." Underneath, stamped: "Pay to the order of Fidelity Union Trust Company, Newark, New Jersey, Daisart Sportswear, Inc.," and deposited in the Fidelity Union Trust Company.

Check dated July 10, 1945, $6,389.75, payable to Daisart Manufacturing Co., endorsed, "Daisart Manufacturing Co., George Smith, Proprietor." Underneath, the stamped endorsement of "Daisart Sports-

wear, Inc.," and "Deposit to the account of Daisart Sportswear" in the Fidelity Union Trust Company. 1717

Check dated September 15, 1945, $5,000, payable to Daisart Manufacturing Co. or George Smith. Endorsed by Daisart Sportswear, Inc. and deposited to its account in the Fidelity Union Trust Company.

Check dated July 17, 1945, $5,000, Daisart Manufacturing Co., and deposited with endorsements as follows: "Daisart Manufacturing Co., George Smith, Proprietor, Pay to the order of Fidelity Union Trust Company, Daisart Sportswear, Inc."

Check dated July 23, 1945 for $6,808, payable to 1718
Daisart Manufacturing Co., endorsed, "Daisart Manufacturing Co., George Smith, Proprietor, Daisart Sportwear, Inc.," and deposited in Fidelity Union Trust Company.

Check dated August 13, 1945, for $5,087.06, payable to Daisart Manufacturing Co. and endorsed, "Daisart Manufacturing Co., George Smith, Proprietor, Daisart Sportswear, Inc.," and deposited in Fidelity Union Trust Company.

Check dated October 25, 1945 for $15,000, payable to Daisart Manufacturing or George Smith, en- 1719
dorsed by George Smith, deposited in Fidelity Union Trust Company.

Check dated October 29, 1945 for $10,000, payable to Daisart Manufacturing Co. or George Smith, and endorsed, "Daisart Manufacturing Co. for deposit, Pay to the order of National Safety Bank & Trust Co. of New York, Daisart Manufacturing Co."

May I at this time read, with the Court's permission, Government Exhibit 84?

1720 The Court: Yes.

Mr. Rudykoff: This is a memorandum headed: "Case No. N. Y. 3634. Page 2. Number of employees—1944-45.

Underneath that 1945-10."

"Details of investigation.

"On August 22, 1945, Mr. Abraham Pindek, WPB Compliance Investigator, visited the premises of subject and interviewed George Smith, secretary.

"Smith stated that he wished his accountant—"

1721 Mr. Hart: If the Court pleases, I object to the reading of this exhibit on the grounds specified previously when I objected to its admission. This is a report of a witness who was in Court and testified, and the testimony on direct and cross examination is a matter of record. This was simply used by him to refresh his recollection.

The Court: Let me see it.

(Exhibit handed to the Court.)

The Court: This was the exhibit from which we

1722 removed the first and last pages.

Mr. Rudykoff: That is correct, your Honor.

The Court: I would like you to withhold the reading at this time, Mr. Rudykoff. I want to give this matter some thought.

Mr. Rudykoff: I will be glad to do so, your Honor.

The Court: And I will do so during recess. I would like to consult with counsel in Chambers concerning this one exhibit, Exhibit 84. There were so

many papers offered in evidence that I want to be careful that no injustice is done to anybody. 1723

Mr. Rudykoff: I have no objection to that, your Honor.

The Court: I suggest you leave this here with me.

Mr. Rudykoff: Very well, sir.

The Court: And I will read it over very carefully.

Mr. Rudykoff: May we have a short recess, your Honor?

The Court: Yes.

Mr. Hart: I second that motion.

The Court: We will excuse the jurors now. 1724

(The jury left the court room, and the following took place:)

The Court: I want this on the record.

Gentlemen, I asked you Thursday and Friday to prepare requests to charge. The rules of the Court provide that those requests should be submitted before summation.

The Court has already begun to draft its charge to the jury so that it will not be rushed in the closing days of the trial, and, I do not want to unduly rush 1725 counsel in the case, but I do not want the requests submitted to me at the last moment and then I would be required to hurriedly rule on them. They should be ruled on in advance of summation so that counsel can guide themselves in the course of their summations.

I want to close the evidence in this case, if possible, today, and begin summations tomorrow. For that

1726 reason I advised counsel of this situation on Thursday and again on Friday.

Mr. Hart: If the Court please, I started to prepare my requests to charge and, of necessity, I cannot complete them until the evidence is completed. There will be a lapse of time after the close of the case sufficient to permit me at least to get the services of a stenographer and complete the dictation of it. Your Honor knows that we have been engaged in the trial of this case from morning until night and I have had no time.

1727 Mr. Siegel: As a matter of fact, Judge, I was working Saturday afternoon on this—on a lot of the fundamentals—but I also must wait until the conclusion of the evidence to see just what we have to ask you to charge on. I mean, I have the fundamentals.

The Court: The rules provide that the requests shall be submitted between the close of evidence and the beginning of summations. I just want to call that to your attention again, with the thought that I won't have these submitted at the last moment.

Mr. Hart: Well, will there be a lapse of time between the close of evidence and the commencement of summations?

1728

The Court: There will be a lapse of time, naturally. How much that lapse is going to be, I do not know yet.

Mr. Siegel: May we do this, Judge: when we get through may we sit down with you and find out what the charge is? We can go over the fundamentals and see what you have, so that we do not have to submit the same things.

The Court: That I am agreeable to do, but I do not want that to be taken by you as a limitation of your rights to submit requests. 1729

Mr. Rudykoff: I am prepared to have them ready for submission the first thing tomorrow morning.

The Court: That is what I have in mind. If possible, I would like them submitted before opening tomorrow morning. I will try to give you every possible latitude in the case.

Mr. Hart: It depends on what time we will recess tonight.

1730

(Short recess.)

LOUIS WIENER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

Q. Mr. Wiener, what is your occupation? A. An accountant, sir.

Q. How long have you practiced your profession? A. Ten years, sir. 1731

Q. Where do you practice it? A. In northern New Jersey.

Q. Do you know the defendant George Smith? A. Yes, I do.

Q. Do you see him in Court? A. Yes, I do.

Q. Will you indicate the defendant? A. This gentleman there (indicating).

Mr. Rudykoff: Indicating the defendant George Smith.

1732 Q. During 1944 and 1945, were you retained by Daisart Sportswear, Inc. in any capacity? A. Yes, I was.

Q. In what capacity? A. I was engaged to prepare the payroll records for Daisart Sportswear.

Q. Were you so employed during 1944 and 1945? A. I was, sir.

Q. Will you tell us first how often you came to the place of business? A. One day per week.

Q. What was the address? A. 99 Central Avenue, Newark.

Q. How many stories were occupied by the corporation?
1733 A. Two.

Q. Were those the two upper stories? A. Two upper stories.

Q. Where was the office in which you were located? A. On the second story.

Q. Would that be the first story you come to? A. That's right, it is a three-story building.

Q. Above the level of the street? A. That is right.

Q. What were you retained to do? A. To prepare the payroll records of the company.

Q. Did you work on Social Security reports? A. Social
1734 Security, State Unemployment, Withholding Tax, Federal Excise Tax.

Q. Were you employed to work on any income tax reports? A. No, sir.

Q. Whether for the corporation or George Smith, individually? A. No, sir.

Q. Were you at any time employed to do that kind of work? A. No, sir.

Mr. Hart: I object, if the Court please. The question has already been answered.

The Court: We will allow the answer to stand.

Q. Were you employed to prepare or audit any books of account? A. No, sir. 1735

Q. Did you work on any sales books? A. No, sir.

Mr. Hart: Now, if the Court please, I object to the form of the question. He asked him what he was employed as, and he told him.

The Court: Yes, your objection is sustained. Try not to lead the witness.

Mr. Rudykoff: Very well.

Q. In the course of your employment what books, if any, did you observe? A. The only books that I did work on were the payroll books for the corporation. 1736

Q. Did you observe any other books in and around the office? A. There were other books around but I had nothing to do with them.

Q. Do you know what the contents of the books were?

The Court: Did you look at them at any time, the other books?

The Witness: I had no occasion to go through them at all.

1737

Q. During 1945 were you present at an examination made by the War Production Board? A. I was, sir.

Q. And did you have a talk with George Smith before that examination relating to that examination? A. The only talk that I did have with Mr. Smith was that is was a day when I came in to prepare the payroll. I was there, and Mr. Smith told me that two men, or some gentlemen had called and that they were coming over and would I remain, and I did.

1738 Q. With regard to that particular meeting, do you recall the month? A. It was in August of 1945.

Q. And who was present? A. There were two gentlemen from the War Production Board and Mr. Smith.

Q. Do you recall the names of the gentlemen who represented the War Production Board? A. I do.

Q. What were they? A. Rindek and I believe it is Berman, or Bierman, or one of those names.

Q. Do you know Deeb? A. Who?

Q. Deeb, Al Deeb? A. Yes.

Q. Is the name familiar to you? A. Yes.

1739 Q. Do you see anyone bearing that name in Court? A. Yes, I do.

Q. Will you indicate him? A. The gentleman on the end.

Mr. Rudykoff: Indicating the defendant Deeb.

Q. Where did you see him? A. At Daisart Sportswear.

Q. About how many occasions? A. Possibly two or three times.

Q. Were you employed on a monthly basis? A. Yes, I was.

1740 Q. What was your compensation?

Mr. Hart: I object to that, if the Court please.

The Court: We will allow it.

A. $50 per month.

Q. In the course of your duties, did you make out any checks? A. Payroll checks.

Q. And how often was that? A. Once a week.

Q. During that period, 1945, do you recall on what bank

those checks were drawn? A. I think it was the Fidelity 1741
Union Trust Company.

Q. Now, with regard to banks, do you recall drawing checks against one or more bank accounts? A. To my recollection, there were two bank accounts, but they were used—I don't believe they were used simultaneously.

Q. That is your best recollection? A. That's right.

Q. With regard to checks relating to other than payroll matters, did you draw such checks? A. No, sir.

Q. When was the last time you did any work whatsoever for Daisart Sportswear? A. I believe it was some time in September of 1945. 1742

Q. With regard to this meeting in August, 1945, at which the War Production men were present, what part of the day did it take place, with regard to morning or afternoon? A. Morning, I believe.

Q. About how many hours were they present? A. To my best recollection, about three or four hours.

Mr. Rudykoff: You may inquire.

Cross Examination by Mr. Hart:

Q. This $50 a month that you get cover your services 1743
for one day each week, is that right? A. That's right.

Q. And you say that your work was done at the plant of Daisart at 99 Central Avenue? A. That's right.

Q. What did the average payroll run, the maximum payroll? A. Oh, I should say in the vicinity of $2,000, about two thousand or twenty-five hundred.

Q. About two thousand or twenty-five hundred per week? A. Per week.

1744 Q. And that covered these employees of Daisart? A. That's right.

Q. And the employees of Daisart for the most part were what; what did they do? A. They were operators in the plant.

Q. Did Daisart have machinery there? A. Definitely.

Q. And during the course of time that you visited the premises in 1944 and 1945, did you see the machinery in operation? A. Yes, sir.

Q. Did you see them making bags? A. Yes, sir.

Q. What kind of bags were they? A. From what I can-
1745 remember they were either ammunition or powder bags.

Q. Were they big or small? A. Large bags.

Q. They were tremendous, as far as bags were concerned, is that right? A. That's right.

Q. You say the payroll was about $2,000 to $2,500 a week. About how many employees did you see working as operators making these bags? A. Oh, there were approximately sixty. They varied sometimes to seventy-five. Sometimes it was fifty. Depending on how available the help was, at the time.

Q. Did Daisart have another plant at Montclair? A. They had a place in Montclair before they came to Newark.

1746 Q. Now, were there times when the payroll fluctuated, with specific reference to the way the war went? A. Well—

Q. Do you have any recollection of that? A. Well, it started off small, and then it grew as the times changed. Then there were additional orders and they had additional payrolls.

Q. Do you recall around the time of the invasion of Normandy? A. That was 1944, June 1st, I believe.

Q. And do you recall that after the invasion of Normandy there was a sharp decrease in the orders or the number of employees? A. A decrease?

Q. A decrease, yes, after the invasion of Normandy. 1747
A. I can't remember.

Q. Do you recall after V-E Day the number of employees dropped? A. Oh, yes.

Q. And do you recall in 1945, say commencing around June, the number of employees were considerably less than they had previously been? A. Yes, the payroll had gone down.

Q. That was because the war with Japan was approaching an end? A. That is right.

Q. You say that you saw other books there but you never examined them because it was not part of your 1748
work? A. That's right, sir.

Q. What other books did you see there? A. From what I can remember there were sales invoices around.

The Court: You were asked about books. What other books, not invoices?

The Witness: I thought that Mr. Rudykoff was referring to sales invoices.

The Court: You were asked a question: What other books did you see around? Now, tell us what other books.

The Witness: I saw no other books around other 1749
than the payroll books.

Q. The payroll books were brought into the office where you worked? A. They were at the office.

Q. And each time you came in those books those books were brought into the office? A. Well, they were available; they were on the desk.

Q. They were laid out on the desk for you, is that right? A. That's right.

1750 Q. You don't know where the other books, if any, of the corporation were kept? A. That's right.

The Court: Do you know whether there were other books?

The Witness: No, sir.

Q. You do not know whether there were or were not, is that correct? A. I do not know, sir.

Q. You do not know either way? A. Definitely.

Q. And the only books that you dealt with were the
1751 payroll books and the checkbooks, is that right? A. That's right.

Q. Did you make out the payroll checks? A. That's right.

Q. You say you saw these two men from the War Production Board up there on one morning? A. That's right.

Q. Do you know whether those men came back in the afternoon? A. I think they were there in the afternoon.

Q. Do you know whether they came back the following day and the day after that? A. That I don't remember.

Q. You were not there the following day or the day after that, were you? A. No, sir.

Q. Do you know whether or not Mr. Smith and the
1752 Daisart had another accountant to take care of their regular books? A. I believe they did.

Q. Do you know who the other accountant was? A. Mr. Abe Rothfeder.

Mr. Hart: That is all.

Cross Examination by Mr. Siegel:

Q. Mr. Wiener, you made mention a moment ago on examination that you saw Mr. Deeb two or three times over

at the Daisart plant. Was that in the month of August of 1945? A. I cannot remember. 1753

Q. If that refreshes your recollection? A. I can't remember.

Q. Was it in July? Was it in September, 1945? A. The dates are—I know I was up there one day a week for about an hour or an hour and a half—

Q. When did you get up there? Was it the latter part of the month or the early part of the month? A. One day per week.

Q. Was that usually the latter part of the week that you got there or the early part of the week? 1754

The Court: Did you go there on payroll day?

The Witness: I am just trying to remember the date of the payroll.

The Court: Did you go there on payroll day, on pay day?

The Witness: Well, I believe the payroll was paid on a Wednesday, and I usually was there.

Q. On a Wednesday? A. No, on Monday or Tuesday.

Q. You have no recollection of whether it was in the fall of 1945 when you saw Mr. Deeb? A. No, I don't believe— 1755

Q. How long did you work for the Daisart Corporation? A. 1944 and 1945.

Q. Do you recall what year it was that you saw Mr. Deeb? A. I believe it was in 1945.

Q. 1945? And you cannot recall whether it was in the summer of that year or not? A. No.

Q. You never had any talks with Mr. Deeb, did you? A. No, sir.

1756 Q. And Mr. Deeb was not connected in any way with the Daisart Corporation, was he? A. Not as far as I know, sir.

Q. You took care of their books, you were their accountant, you would know? A. No, sir.

Q. You never carried Mr. Deeb on any payroll, did you? A. No.

Q. For the Daisart Corporation? A. No, sir.

Q. You never made out any checks for Mr. Deeb, did you? A. No, sir.

Q. You never received any instructions of any kind from Mr. Deeb at any time with reference to their business?

1757 A. No, sir.

Q. As far as you are concerned, you just saw Mr. Deeb there the same as you may have seen some other people there, is that correct? A. That is exactly right.

Q. Do you know anything about the nature of his visits there at all? A. No, sir.

Q. You overheard no conversations? A. No, sir.

Mr. Siegel: That is all.

Redirect Examination by Mr. Rudykoff:

1758 Q. Mr. Wiener, you described some work done by Daisart Sportswear in connection with bags. There were, as I understand it, fifty to sixty operators employed by Daisart, is that right? A. That is right.

Q. Will you describe some of the other work being done at the time? A. What do you have in mind by that?

Q. What kind of other work were the operators doing?

The Court: What other products did you see being made in the Daisart factory?

A. There was Lend-Lease items, such as pea jackets and other items—jackets and coats. 1759

Q. Now you are talking about coats; are you speaking of women's coats or men's coats? A. No, they were mostly the—I remember seeing a large quantity of this blue Melton cloth around, and they were being manufactured into Lend-Lease jackets and, I believe, three-quarter length coats.

Q. And three-quarter length coats, you say?

Mr. Hart: If the Court please, he said Lend-Lease jackets.

The Court: Made out of blue Melton. 1760

The Witness: I remember that one item in particular.

Q. What were some of the other things being made? A. Well, they were working on some children's sportswear.

Q. What else? A. They had some type of kits that they were making for the army.

Q. Kits? A. Kits. Other than that, I can't remember.

Q. Did you have anything to do with the charges made—A. No, sir.

Q. (Continuing)—in connection with those products? A. No, sir. 1761

Q. What you have given to us is your observation as you occasionally went into the factory? A. That's right.

Q. Did you have anything to do with the receipt of the merchandise? A. No, sir.

Q. Did you ever check suppliers' bills? A. No, sir.

Q. You mentioned an accountant? Is the name Rothfeder? A. That's right.

Q. How do you spell that? A. Rothfeder.

1762 Q. Did you see him at the Daisart place of business? A. No, I did not.

Q. Who told you that he was the accountant? A. I spoke with Mr. Rothfeder.

Q. When did you speak with him? A. Several times.

The Court: He asked when. Give the time.

The Witness: Well, some time in 1946.

Q. Was that after you ceased to be employed by Daisart? A. That's right.

1763 Q. Where did this conversation take place? A. At Mr. Rothfeder's office.

Q. Did Rothfeder tell you that he was the accountant for Daisart? A. Mr. Rothfeder told me that he was doing the books of the Daisart Sportswear.

Q. In 1946? A. This conversation took place in 1946.

Q. As far as your personal knowledge, during the time that you were doing this work for Daisart Sportswear in 1945 and 1944, did you speak to Rothfeder? A. No, sir.

Q. Did you know Rothfeder? A. Yes, sir.

Q. Did you know him in connection with Daisart? A. No.

1764

The Court: Did you ever talk to him in 1944 or 1945 about Daisart's accounting or books?

The Witness: No, sir.

Q. In this talk with Rothfeder, was it at your office? A. It was at Mr. Rothfeder's office.

Q. Did he call you down? A. I was in to see him about another matter and he spoke with me about that.

Q. And at that time do you recall whether he said, at

the time you were speaking to him, that he was doing some work for Daisart? 1765

Mr. Hart: If the Court please, I object to the form of the question.

The Court: Yes.

Mr. Hart: Secondly, Smith was out of business in 1946.

The Court: The objection is sustained.

Q. What did he say at that time, so far as you recall, with regard to the work Rothfeder was doing? A. Mr. Rothfeder told me that he was working up the records of the Daisart Sportswear. 1766

Q. He was talking of work he was doing at the time you were speaking to him, is that correct? A. That is correct.

Q. Currently in 1946? A. I don't believe it was for current work.

Q. But as to work that he was at that time doing, is that correct? A. That's right; it may have been for prior years, though.

Q. But as to work that he was at that time doing for Daisart, is that right? A. That is right. 1767

Q. Did he say anything else which related to the type of work which he was doing for Daisart? A. I believe he was working up—

Mr. Hart: If the Court please, I object to any conversation—

The Court: The objection is sustained.

Q. You last attended at Daisart's when? A. Some time in September of 1945.

1768 Q. And did you see Deeb prior to September, 1945, or subsequent to September, 1945? A. Prior.

Mr. Rudykoff: You may inquire.

Recross Examination by Mr. Hart:

Q. In making up the payroll, were the operators paid by piece work or paid by the hour, or both? A. I think they were both.

Q. Both? A. Yes.

1769 Q. And you would figure out the time coming to them and the money coming to them, is that correct? A. That's right.

Q. And can you state what comprised the best majority of the work done by these operators during the latter part of 1944 and 1945? A. On Government contracts, I believe.

Q. What particular type of work? A. Well, it was for the bags and for the Lend-Lease items.

Q. Bags and Lend-Lease items? A. That's right.

Q. Did the bags comprise the greater part of the work done? A. I believe they did, sir.

Q. Did you see navy leggings being manufactured? A.

1770 Yes, I did.

Q. And did the payroll reflect that? A. Yes.

Q. Did you see navy pea jackets being made? A. Yes, sir.

Q. And did the payroll reflect that? A. Yes, sir.

Mr. Hart: I think that is all.

Redirect Examination by Mr. Rudykoff: 1771

Q. Mr. Wiener, you said in answer to a question of Mr. Hart that the greater part of the work was related to bags, is that right? A. That's right.

Q. As I understood your testimony, you made no charges for work done by Daisart, is that right? A. That's right.

Q. And your information was confined to the observation made during your occasional visits into the factory, is that right? A. That's right.

Q. You implied from what you said that there was something about the payroll which connected the work done 1772
with a certain type of work? A. Well, there was some piece work and some time work.

Q. And was there anything on the payroll record which indicated whether a particular individual was working on pea jackets? A. No, sir.

Q. Or sportswear or bags? A. No, sir.

Q. So that there was nothing in the payroll which would help us in determining whether—

Mr. Hart: I object to Mr. Rudykoff testifying.

The Court: The form of the question is objectionable. Ask him, was there anything. 1773

Mr. Rudykoff: Very well, sir.

Q. What was there in the payroll, which aided you in determining what kind of work was being done, now confining yourself to the payroll, what was there in the payroll? A. As far as the payroll records themselves were concerned, it was based solely on so many items at so much.

1774 The Court: You were asked a simple question: Was there anything in the payroll records which enabled you to know the type of work done—

The Witness: No, sir.

The Court: (Continuing) —by the employees?

The Witness: No, sir.

The Court: What is your answer?

The Witness: No.

Recross-Examination by Mr. Hart:

1775 Q. Mr. Witness, I am not an accountant, so correct me if I am wrong. You made up the payroll records, did you? A. That's right.

Q. And there was nothing that you put in the payrolls which showed the type of work done, is that right? A. That's right.

Q. You didn't make the payrolls up out of the air? A. That's right.

Q. You made them up out of data or information? A. That's right.

Q. I assume that in factories where they have men working on an hourly basis that they have time cards, is that
1776 right? A. That's right.

Q. And where they have them working on piece work, there are piece work cards or individual cards showing the number of pieces turned out by each individual, is that right? A. That's right.

Q. Did you have those cards? A. Yes.

Q. Did those cards form the basis of your payroll? A. They did.

Q. On your hourly cards you simply computed the number of hours, is that correct? A. That is right.

Q. And multiplied it by the time per hour? A. Right. 1777

Q. And if there was overtime you added the time and a half or whatever it was for overtime? A. Right.

Q. When it came down to the piece work, I assume that there was some specified price for each piece of work? A. Right.

Q. Whether it was a legging, whether it was a pea jacket or whether it was bags? A. Right.

Q. Did these piece work cards show the individual items that these operators were working on? A. No, sir.

Q. Pardon me? A. No, sir.

Q. Did they show the amount of work done by each 1778 operator? A. Yes.

Q. And did they show the price? A. That's right.

Q. And did they have a different price for the bags and a different price per coat? A. That's right.

The Court: By "price," you mean the price paid to the operator per garment or per unit for doing the work?

The Witness: Per unit.

Q. And did you in the course of the time you were there become familiar with the prices paid to the operators for a 1779 bag and the price paid for a coat? A. Yes, I did.

Q. And as a result of your observations and examination of these cards and your making up the payrolls over a period of two years, is that what you based you answer on when I asked you whether the majority of the work consisted of making up these bags? A. I believe they do.

Redirect Examination by Mr. Rudykoff:

Q. Mr. Wiener, when was the last time you saw those records? A. Either August or September of 1945.

1780 Q. Where were they at that time? A. At Daisart Sportswear.

Q. Did you see them thereafter? A. No, sir.

Q. During the time that the War Production men were present at the place of business, was there any talk about payroll records? A. I don't believe I recall the question, sir.

Q. Would you say there was or wasn't? A. I can't answer that for you because I don't know.

Q. Were payroll records exhibited? A. I don't get—

1781 The Court: Did you show the payroll records to these men from the WPB?

The Witness: I just answered that, I don't remember.

Q. You don't remember? A. I don't remember whether I did or not.

Q. You have no recollection one way or the other? A. No, sir.

Mr. Hart: If he does not remember, if the Court please, I submit that he has no recollection, and I

1782 object to the question.

Q. Did you turn over any payroll records to anyone representing the War Production Board? A. I don't remember. 1783

By the Court:

Q. One of the reports that you prepared you said was an Excise report? A. That's right.

Q. New Jersey Excise reports? A. Federal Excise Tax on employment. May I explain that?

Q. No, just answer my question. A. I am sorry.

Q. You prepared the Social Security reports and Unemployment reports, and the Excise reports, and what other reports? A. Withholding reports. 1784

Q. You prepared no report based upon the income or the net income or gross receipts of the company? A. No, sir.

Mr. Hart: I object to that question upon the ground it was incompetent, irrelevant, and immaterial. It has no bearing upon the issues; and upon the further ground that it might lead to an implication which will be prejudicial to the defendants, and I move for a mistrial based upon that question. 1785

The Court: Your motion is denied.

Mr. Hart: Is my objection overruled or sustained?

The Court: Your objection is overruled and your motion is denied.

Mr. Hart: Exception.

1786 *By the Court:*

Q. What books are usually kept by a company in the business of the nature of Daisart Sportswear? A. Ledger books—

Q. Ledgers that show moneys taken in on sales? A. That's right.

Q. Are there ledgers or books that show expenses? A. That's right.

Q. And disbursements? A. Yes, sir.

Q. And is there a cash book? A. There usually is.

1787 Q. And a day journal? A. Yes.

Q. There are inventory books kept? A. Sometimes.

Q. Did you see any of those books at any time that you went to the Daisart Sportswear Company? A. No, sir.

Q. Did you ever talk to the defendant Smith concerning whether or not those books were in existence? A. No, sir.

Recross Examination by Mr. Hart:

Q. Did you have anything to do with those books? A. No, sir.

Q. Was it any of your business? A. None whatsoever.

1788 Q. Were you being paid to examine those books? A. No, sir.

Q. Did you think it incumbent upon you to make inquiries concerning what books they kept if you were hired simply to make up the payroll? A. No, sir.

Q. Did you wander around the office looking for books or did you go in there and attend to your business? A. That is exactly right, I attended to my business.

Q. You were given fifty bucks a month for one day a week, is that right? A. That's right.

Redirect Examination by Mr. Rudykoff: 1789

Q. Did you get any extra compensation for being present during this examination— A. No, sir.

Q. (Continuing)—by the War Production Board? A. No, sir.

Q. Did Mr. Smith tell you what the examination was about? A. No, sir.

Q. Did he say what he wanted you to do? A. He wanted me to be there in case I might be helpful to the gentlemen from the Board.

Q. The only way you could be helpful was in connection with payroll, is that correct? A. That's right. 1790

Q. And you don't recall whether you gave those payroll records to the War Production men? A. I may have been able to be helpful—

The Court: You were only asked—

Mr. Hart: If the Court please, a question was asked, the only way you could be helpful would be—

Mr. Rudykoff: He has already answered that question. Now I have asked him:

1791

Q. Do you recall whether you turned over those payroll records? A. I don't remember.

Mr. Hart: I object to that. He has asked that ten times.

The Court: We will allow him to answer again. He says he does not remember.

The Witness: I don't remember.

Mr. Hart: That is all.

1792 The Court: Any other questions?

Mr. Rudykoff: That is all.

The Court: All right, that is all.

(Witness excused.)

NATHAN KATZ, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

1793 Q. Mr. Katz, what is your occupation? A. Supervisor, New York Post Office.

Q. How long have you been so employed? A. Twenty-nine years.

Q. Did you at my request investigate premises 1133 Broadway? A. Yes.

Q. What did you ascertain with regard to the occupancy of Room 503 of L. A. Fox—

Mr. Siegel: If your Honor pleases, when, what period was this?

1794 The Court: Yes.

Mr. Rudykoff: I have not finished my question.

The Court: I think you should fix the time.

Mr. Rudykoff: I would like to, if given the opportunity.

The Court: All right.

Q. During the years 1944 and 1945, of Room 503?

Mr. Siegel: If your Honor pleases, when was this investigation made? He still has not stated it.

He has given him the years, but when was it made? 1795

The Court: I think the objection is well taken.

Q. When was this investigation made?

The Court: When did you investigate this?

The Witness: Last week, and again this morning.

Q. To what premises did you go?

Mr. Siegel: If your Honor pleases, I will now move it be stricken out. 1796

The Court: He hasn't testified to anything yet.

Mr. Siegel: I am sorry.

Q. To what premises did you go? A. 1133 Broadway, Room 503.

Q. Were there names printed on the door? A. Yes, sir.

Mr. Siegel: If your Honor pleases, just a moment. I object to this.

The Court: Your objection is overruled.

Mr. Siegel: This is on an investigation that was made last week. 1797

The Court: He may testify as to what names are there.

Mr. Hart: If the Court please, I object to what names are on the door of those premises last week.

The Court: It does seem a little remote, Mr. Rudykoff.

Mr. Hart: A little remote.

The Court: To have somebody testify concerning what they observed in November when we are concerned with what happened in 1944 and 1945.

1798 Mr. Rudykoff: I agree to that but I think if we ascertain who occupies the premises today and—

The Court: Wouldn't the best proof of that be the occupants themselves?

Mr. Rudykoff: Perhaps your Honor is right, but let us get what we can from this witness.

Mr. Hart: If the Court please—

The Court: I will rule on the questions as they are asked.

Mr. Hart: Will your Honor rule on this question: what names he saw on the door there yesterday

1799 or last week?

The Court: Yes, I will overrule that objection and I will take it.

Q. What names did you see on the door of Room 503? A. Nash Products.

Q. At 1133 Broadway? A. Nash Products.

Q. How do you spell that? A. Nash Products Company.

Q. Did you see the name of L. A. Fox?

Mr. Siegel: I object to the form of the question.

Mr. Hart: I object to the question itself.

1800 The Court: The question is objectionable in form. It is leading.

Q. What other names did you see? A. None other.

Q. With regard to 230 Fifth Avenue, did you make an investigation at my request? A. Yes.

Q. When? A. Last week.

Q. And what floor did you visit? A. To see if the name requested was there.

Mr. Siegel: I object to that and move to strike it out. 1801

Mr. Rudykoff: Consented to.

The Court: The motion is granted.

Q. What floor did you go to? A. The fifth floor.

Q. Who occupies the fifth floor at the present time?

Mr. Siegel: I object to the question.

The Court: Objection overruled.

Mr. Siegel: On the ground that this is an investigation made last week, Judge.

The Court: We will allow it. 1802

Mr. Siegel: Pertaining to something that happened two years ago.

The Court: What weight it is to receive is for the jury to determine.

Q. What name did you see? A. Will you repeat that?

Q. What name did you see on the door? A. There are quite a few concerns on that floor.

Q. All right. Will you tell us the names of the concerns on the floor? You are speaking now of the fifth floor. A. I wouldn't know all of the concerns on that floor.

Q. What names did you observe? A. Borab Brothers. 1803

Mr. Rudykoff: I suppose there is no objection to that, is there?

Mr. Hart: If there is an objection, you will hear it.

The Court: Now, counsel, please make your remarks to the Court.

Mr. Hart: The remark was addressed to me by
1804 Mr. Rudykoff.

The Court: It applies to both of you.

Mr. Hart: Then I think that Mr. Rudykoff is the one who raised the question to me. If I am going to object, I will object.

The Court: I suppose you want to be respectful to the Court. I hope you continue to be so.

Mr. Hart: Mr. Rudykoff—

The Court: We will proceed.

Mr. Hart: He said, I suppose there will be no objection to that.

1805 The Court: We will proceed with the trial.

Q. What room number did you see the name of Borab Brothers on? A. May I check my notes?

Q. Yes.

Mr. Siegel: If your Honor pleases, I do not know what the witness is refreshing his recollection from now?

The Witness: No, no.

Mr. Rudykoff: Does it matter?

1806 The Court: He may refer to any paper or document in his possession that may refresh his recollection.

The Witness: I haven't anything down here, but I think it was 505, if I am not mistaken.

Q. With regard to the names on that particular door, what other names were present? A. There were no others.

Q. With regard to premises 230 Fifth Avenue, did you attend at the eleventh floor? A. Well—

The Court: Did you go there, to the eleventh floor?

The Witness: Yes, I went to the eleventh floor.

Q. When did you go there? A. The eleventh floor—

The Court: When?

The Witness: This morning again. Last week and this morning.

1808

Q. Who occupies the eleventh floor? A. There are fourteen concerns on that floor.

Q. Was the name of George A. Howard among those? A. No, none appeared.

Mr. Siegel: I object to that question. There has been no evidence here of what floor Howard had an office on. There has been no evidence here.

The Court: I do not know whether it appears from the exhibits or not. I will leave it for the jury to determine. This does seem to me to be rather remote, as to what was there last week or this morning. We are concerned with what was there, and the jury is concerned, and we are too, of what was there in 1944 and 1945.

1809

Mr. Rudykoff: I agree with your Honor that perhaps it is remote evidence. I will say this: if that is all the evidence that can be shown, I will move to strike it out.

The Court: All right, I will take it on that statement, and the objection is overruled.

Mr. Rudykoff: That is all.

Mr. Siegel: I at this time move to strike out all

1810 the testimony given by this witness, on behalf of the defendant Deeb, as not being binding upon the defendant and not being with the issues of this indictment or these informations, on the ground that the investigation was made last week and this morning.

The Court: I will reserve decision on that motion and see whether the Government offers further proof.

Mr. Hart: May I raise this objection for the record: I object to this line of testimony that Mr. Rudykoff says, if that is all the evidence he adduces

1811 on that point that he will move to strike it out; in the meantime the evidence is here and even though it is stricken out later on, it is part of the record.

The Court: If it is stricken out, the jury will be fully instructed, and I know that the jury will follow the instructions of the Court.

Cross Examination by Mr. Hart:

Q. Mr. Witness, were you at 503 Broadway?

1812 Mr. Rudykoff: 503 Broadway?

Q. 1133 Broadway, pardon me. A. 1133 Broadway, yes.

Q. In 1944 and 1945? A. I wasn't there. I had no reason to be.

Q. Were you in 503 Fifth Avenue?

The Court: 230.

Q. Room 503 at 230 Fifth Avenue, in 1944 or 1945? A. No.

Q. Were you on the eleventh floor of 230 Fifth Avenue in 1944 or 1945? A. No. 1813

Cross Examination by Mr. Siegel:

Q. Mr. Katz, did you go over to 220 Fifth Avenue? A. Yes, sir.

Q. Or 230 Fifth Avenue? A. Both.

Q. And you went to the fifth floor of 230 Fifth Avenue? A. That's right.

Q. And you testified a moment ago that there you found an office— A. Just a moment.

Q. Please let me finish my question. A. Yes, sir; I am sorry. 1814

Q. You testified a few moments ago on direct examination of the District Attorney that you went to 230 Fifth Avenue to the fifth floor and there you found the office of Borab Brothers, is that correct? A. 230? No.

Q. 230 Fifth Avenue. A. 220.

Q. Did you just testify to that a few moments ago on direct examination? A. Borab Brothers is at 220, am I correct?

Mr. Siegel: We will have the stenographer read it back. 1815

The Court: The witness said 230.

The Witness: 220, eleventh floor.

The Court: Was it 230, the fifth floor, where you found Borab Brothers?

The Witness: No, it is 220 Fifth Avenue.

Q. When you testified a moment ago that you found Borab Brothers at 230 Fifth Avenue, you were mistaken? A. I was mistaken, counsel.

Q. You were mistaken then? A. Borab Brothers is
1816 not at 230 Fifth Avenue. Borab Brothers is at 220 Fifth Avenue.

Q. In other words, you didn't find any Borab Brothers at 230 Fifth Avenue? A. No, sir.

Q. You were merely looking at 230 Fifth Avenue for some other people, weren't you? Who were you looking for in 230 Fifth Avenue? A. Mr. Howard at 230 Fifth Avenue.

Q. And in 1133 Broadway who were you looking for? A. Mr. Fox.

1817 Q. Did you have any occasion to go to 230 Fifth Avenue before last week? A. No.

Q. To make any investigation? A. No, none.

Q. And you did not have any occasion to go to 1133 Broadway before last week to make any investigation? A. No; no, sir.

Q. Did you go to the superintendent of the building? A. Yes, I tried to find him.

Q. But you couldn't find him? A. I saw him.

Q. And did you go to the office of the building? A. No.

Mr. Hart: I object, if the Court please, to any-
1818 thing he did yesterday or last week.

The Court: Your objection is sustained.

Q. In other words, you could not say of your own knowledge, Mr. Katz, that in 1945, that a Mr. Howard was not at 230 Fifth Avenue? A. No, from my knowledge, no.

Q. I said, from your knowledge you could not? A. No.

Q. You could not say from your knowledge that in 1945 Mr. Howard did not have an office at 1133 Broadway, could you? A. To my knowledge, no.

Q. You are basing this whole—I will withdraw the question. The only thing that you know about is what you saw last week and this morning? A. If I was given an opportunity— 1819

Q. Is that correct or not? A. Yes.

Mr. Siegel: That is all.

Redirect Examination by Mr. Rudykoff:

Q. Mr. Katz, does the Post Office keep records of changes of addresses? A. Yes, sir.

Q. And with regard to change of address, was there any change of address indicated in 1944 or 1945— A. None. 1820

Q. Just a moment. —with regard to George A. Howard, 230 Fifth Avenue. A. None.

Q. What is the answer? A. The answer is, no change of address.

Q. Are you making that statement as a result of an examination of the records? A. That's right, of the records.

Mr. Siegel: If your Honor pleases, I will move at this time to strike out the answer given as being highly prejudicial, as not being binding upon the defendant here, whether he left a forwarding address or not, and I move to strike it out. 1821

The Court: You mean whether Howard left a forwarding address?

Mr. Siegel: Whether Howard left a forwarding address or not.

The Court: It is evidence that will be received. The objection is overruled. The jury will give it such weight as they think it should receive.

1822 Q. With regard to the name L. A. Fox, and directing your response to premises 1133 Broadway, do the records of the Post Office Department disclose any change of address notification for the period 1944-1945? A. None; none whatsoever.

Q. In what particular district is 1133 Broadway located? A. In Madison Square Station district.

Q. And in what district is the address 230 Fifth Avenue located? A. General Post Office district.

Q. And are those records that you examined? A. Sir?

Q. And are those the records which you examined? A. Yes, sir.

1823

Recross Examination by Mr. Hart:

Q. Mr. Witness, does the Post Office have a record of every change of address? A. Yes.

Q. Or only those changes of address where the party who moves to a new address files it? A. Well, naturally, if they go to a new address they put the removal in.

Q. And if they don't put the removal in? A. Well, then we don't know.

Q. I see. A. We don't know what happens to them.

1824 Q. And are there many, many hundreds of cases like that? A. Yes, I will admit that. There are people that don't put in their removal.

Q. I haven't finished my question. You understood what I was going to ask you. Are there many, many cases where people do not bother to send in their changes of address? A. That's right.

Recross Examination by Mr. Siegel:

1825

Q. Do you know, Mr. Katz, for how long a period of time those slips are kept if a request is made for a change of address? A. Removals are kept up to two years, after which they are outlawed. In other words, we don't have to forward any mail after two years unless there is another removal filed.

Q. You say that you looked at some record. Where are those records kept that you looked at? A. In each post office, in each station, each carrier has his own book record.

1826

Q. What are they, in the form of a book or slips? A. In the form of a book.

Q. This change of address or forwarding address is made in the form of a card, isn't it? A. That's right.

Q. And the card is given either to the postman or mailed in to the post office? A. Yes, that's correct.

Q. After you get these cards, you then enter them in a book; is that the way it is done? A. That's right.

Q. You do not know of your own knowledge, of course, whether a card was received or not other than the fact that you may not see it in the book? A. That's correct.

1827

Q. It is possible that a card may be mailed there and not marked in the book; isn't that possible? A. That isn't possible, because we check on those things.

Q. Did you ever hear of mail going astray? A. Certainly.

Q. Sometimes letters are mailed and they do not get to their destination? A. That's true.

Q. I mean, the Post Office is not that perfect? A. That's right.

Q. And mistakes are made? A. That's right.

1828 Q. So you don't know of your own knowledge whether the cards were actually received or not—of your own knowledge? A. My knowledge is that when a card is received it is entered.

Q. But you do not know whether they received the card, do you? A. Certainly I know whether they receive cards.

The Court: All you know is that you could not find a record of a card, isn't that right?

The Witness: May I emphasize it. When we check these things—

1829 The Court: Now, please. You looked for a card of a change of an address?

The Witness: That's right.

The Court: You did not find any?

The Witness: That's right.

The Court: That is all you know about it?

The Witness: That's right.

Q. This is more than two years ago, so those cards are no longer in existence? A. That's right.

Q. And you have no way of now finding those cards, isn't that correct? A. They destroyed after two years.

1830

By Mr. Hart:

Q. In other words, if a card was filed by Fox or Howard more than two years ago, it would not be there now? A. That's right.

The Court: All right, are there any other questions?

Mr. Rudykoff: That is all.

1831

(Witness excused.)

The Court: Next witness.

Mr. Rudykoff: The carrier, please.

SAMUEL BOSTWICK, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

1832

Q. Mr. Bostwick, are you connected with the Post Office? A. Yes, sir.

Q. In what capacity? A. As a carrier.

Q. How long have you been so connected? A. About twenty years.

Q. Is 220 Fifth Avenue in your route? A. Yes, sir.

Q. Do you deliver mail to a concern known as Borah Brothers? A. I do.

Q. On what floor are they located? A. Fifth floor.

Q. Have you received mail addressed to Albert J. Deeb, care of Borah Brothers? A. I have.

1833

Mr. Siegel: Just one moment. What period, Judge? I think it is very important that we get the period.

The Court: Yes, the period should be fixed.

Mr. Rudykoff: This is not going to hurt his client so I suggest he be patient.

Mr. Siegel: All right. What was the answer?

Q. Have you received such mail? A. I have.

1834 Q. During what period? A. Within the last few years. Within this year, too.

Q. What did you do with the mail that was so addressed? A. Delivered it to Borab Brothers.

Q. Did you receive in some cases mail addressed to Deeb, Albert J. Deeb, or the equivalent, without being in care of Borab Brothers? A. I would deliver it to Borab Brothers.

Q. And do you recall some occasions— A. I do.

Q. Do you have a record of change of addresses? A. Only within the last two years.

1835 Q. During that period of time do you have a record of a change of address for Mr. Deeb? A. No, sir.

Q. Is 230 Fifth Avenue in your route? A. It is.

Q. Do you have your records which relate to the names and addresses of people located—that is, the room numbers of people located at 230 Fifth Avenue? A. At 230?

Q. Yes. A. Well, we go according to the board and those that we remember.

Q. With regard to 230 Fifth Avenue, do you recall the name George A. Howard? A. I do not.

Q. Did you ever get any mail, so far as you recall, addressed to him? A. Not that I recall.

1836 Q. Or to him in care of another? A. Not that I recall.

Q. With regard to that address, do you have any recollection of any change of address for George A. Howard? A. No, sir.

Q. Is 1133 Broadway in your district? A. No, sir.

Mr. Rudykoff: You may inquire.

The Court: How long have you been on this route delivering at 230 Fifth Avenue?

The Witness: Ten years.

The Court: Were you delivering there in 1944 and 1945? 1837

The Witness: I was.

Cross Examination by Mr. Hart:

Q. At 230 Fifth Avenue did you deliver mail to a party by the name of Telsey? A. No, sir.

Q. Or McKellar? A. No, sir.

Q. Or Ahearn? A. No, sir.

Q. Or Cohen? A. There are some Cohens in the building.

Q. Is there a Goldberg there? A. Not that I recall. 1838

Q. Well, you won't say there isn't, will you? A. I am pretty sure there isn't.

Q. But you won't say positively that there isn't. Do you know who is on the fourth floor of that building? A. The fourth floor?

Q. Yes, who is on the fourth floor? A. There are about ten or twelve different concerns.

Q. Could you mention the names of all of them now? A. I could mention most of them.

Q. How about the eighth floor? A. I could mention most of them, too.

Q. And the eleventh floor? A. All of them, too. 1839

Q. All of them or most of them? A. I can practically say all of them.

Q. So on some floors you can remember most of them and on some floors you can remember all of them? A. I mean, I can practically recall each name of the firms, but it would be hard for me to take and list them without skipping one.

Q. When you say you could recall most of them that means that you cover quite a number of buildings, don't you? A. I cover three to four buildings.

1840

Q. How many tenants are in those three or four buildings? A. Well, I would say an average of about 350 or over.

Q. And there are some sub-tenants, too, aren't there? A. There are plenty of them.

Q. There are what? A. There are plenty of sub-tenants.

Q. So all in all there are five or six hundred tenants in each building, including sub-tenants? A. Well, if you go that way, yes.

1841

Q. Moving in and out at different times, is that right? A. That's right.

Cross Examination by Mr. Siegel:

Q. Of course, you remember very distinctly delivering mail of Mr. Deeb's to the Borab office at 220 Fifth Avenue? A. I do.

Q. And that was during the years of 1944 and 1945, was it? A. I can recall 1945, 1946 and 1947, but—

Q. He was there during 1945, 1946 and 1947? A. And 1947.

1842

Q. And he received mail either in care of Borab, or his name was just on there and you delivered it to the Borab office? A. That's right.

Q. You never delivered any mail to Mr. Deeb at any other building, did you? A. No, sir.

Q. Did you ever deliver any to 1182 Broadway? A. I don't carry that.

Q. You don't carry that building at all? A. No, sir.

Q. But you never delivered any to 230 Fifth Avenue? A. No, sir.

Q. Or to 1133 Broadway? A. No, sir.

Q. You made an investigation concerning this? A. Con- 1843
cerning this?

Q. Concerning what you are testifying to this morning. A. Well, I don't know what you mean by "investigation."

Q. Well, when for the first time were you asked to look for this information that you are testifying to? A. As far as I know, it was today.

Q. This morning? A. If they might have asked me the name a month or two months ago or three months ago, I don't recall, but if they did I would answer that it is Borab.

Q. You haven't got the change of address slips any 1844
more, have you, for the time before the last two years, only for two years you keep them? A. Only for two years.

Q. And after two years they are destroyed? A. That's right.

Q. You don't know whether you received a change of address slip for Mr. Deeb or not, do you? A. Well, I can answer for the last three years. I can't recall before that.

Q. You don't know Mr. Deeb, do you? A. No, sir.

Q. And you didn't make any investigation during 1945 in 1133 Broadway or 230 Fifth Avenue to find out whether Mr. Howard or Mr. Fox was in any of those buildings? A. 1845
I don't recall any names of that—

Q. I say, you didn't make any investigation in 1945 with reference to those names, did you? A. I don't think so.

Q. This matter with reference to these names was only called to your attention when, this morning? A. That's right.

Q. For the first time? A. That's right.

Q. And you can't very well remember the names of people who may have shared office space in those buildings.

during 1945, can you, at this time? A. I could say prac-
1846 tically most of them.

Q. But you don't remember all of them? A. Well, it would be hard for me to say offhand all of them.

Q. It would be almost impossible? A. Almost impossible.

Q. And particularly in view of the fact that nobody directed your attention to these names other than this morning? A. That's right.

Q. So that there was no particular reason for remembering the name of Mr. Howard or Fox or Jones or Siegel
1847 or anybody else, and it is only now that this matter has been brought to your attention so that you would say on the basis of just being reminded of it this morning that you could not say with any degree of definiteness whether Mr. Howard or Mr. Fox was in those buildings in 1945? A. Well, I could practically answer yes on Mr. Howard, but you would have to give me an initial or a first name on Fox or anything like that. I can't recall.

Q. Were there Foxes in the building? A. There are Foxes, yes.

Q. A lot of Foxes? A. There are.

1848 Mr. Rudykoff: Of course, 1133 is not his district.

Q. Is 1133 your district? A. No.

Q. I thought 1133 was in your district. You are only talking about 230 Fifth Avenue? A. 220 and 230.

Q. You don't know anything at all about 1133 Broadway? A. No, sir.

Q. I thought that was in your district, too? A. No.

Mr. Siegel: That is all.

Redirect Examination by Mr. Rudykoff:

1849

Q. As far as 230 Fifth Avenue, was George A. Howard there, so far as you recall? A. No, sir.

Q. In 1944 and 1945? A. No, I have no recollection of any name of that sort.

Q. You were asked about recalling names. Do you recall Deeb? A. I do.

Q. And when was the first time you were asked about Deeb? A. Well, I was asked this morning. I might have had an inquiry before on it but I couldn't answer for sure.

1850

Mr. Rudykoff: That is all.

Recross Examination by Mr. Siegel:

Q. Did Mr. Deeb receive quite a bit of mail at 220 Fifth Avenue? A. Not too much. I wouldn't say more than—well, maybe a dozen a year or something around that sort.

Q. Letters? A. Once a week or twice a week. It may have been even less than that.

Q. You don't know independently, do you? A. Well, I couldn't say, but—

Q. Are you the only one—

1851

The Court: Let him answer. You could not say what?

The Witness: I couldn't say just exactly how many. All I know is that there's about four or five who bring up their mail—there's four who deliver their mail. I can only say what I deliver.

Q. That is just what I was going to ask you, Mr. Witness. You do not deliver all the mail to those buildings, 220 and 230? A. Not all the mail.

Q. How many other letter carriers deliver the mail to
1852 those buildings? A. There's four of us.

Q. So what mail was delivered by the other letter carriers you would not know about? A. No, sir.

Q. So when you said a dozen letters that was on the basis of what you delivered personally? A. That's right.

Q. Not knowing what may have been delivered by other letter carriers? A. That's right.

Q. Getting back to 230 Fifth Avenue--

Mr. Siegel: Is Howard at 230 Fifth Avenue?

Mr. Rudykoff: That's right.

1853

Q. You do not know whether any of the other letter carriers delivered any mail to a Mr. Howard in that building? A. Well—

Q. Do you, of your own knowledge? A. To my knowledge I have no recollection of any Howard in the building, so I don't see how it could be delivered.

Q. And that applies to all the sub-tenants that there may be in those offices? A. That's right, if there was a Mr. Howard, I would know the name.

Q. On the basis of what you can now recall? A. That's
1854 right.

Q. And this is pertaining to something that took place two years ago and your memory is very good today of what you did two years ago? A. Well, I don't recall of any Howard in the building.

Mr. Siegel: That is all.

Redirect Examination by Mr. Rudykoff:

1855

Q. What is your route as far as time is concerned? A. I don't understand that question.

Q. Well, perhaps you don't. What is your shift? A. Well, we change shifts. I may make the building once a day, I may make it once in two days, it's according.

Q. But did you visit the building about once a day at least during the year 1945? A. I could say practically once a day.

Q. And was that so during 1944? A. That's right.

Q. And for how many years prior to that time? A. Ten years. I am on the route ten years.

1856

Q. And since then have you visited it at least once a day? A. Well, I would say maybe once in two days. It's hard to say once a day because we get a little help, and there's some days I don't get there and some days I do.

Mr. Rudykoff: Very well.

Recross Examination by Mr. Hart:

Q. Do you get a day off? A. That's what I am saying.

Mr. Hart: All right.

1857

The Court: Are there any other questions?

Mr. Rudykoff: That is all, thank you.

(Witness excused.)

The Court: Somebody told me that if I let the jury go a little before one, it would be more convenient.

Mr. Rudykoff: I do not want to interfere with that arrangement.

The Court: Do you want to call a witness now?

1858

Mr. Rudykoff: It may take us beyond one o'clock and I would not want to be responsible for that.

The Court: It has been suggested to me that instead of one o'clock, let the jury go a little before one because there is a lull in between the hours there. You are excused then until 2:10. The admonition of the Court as heretofore given to you is still the same.

(Recess to 2:10 P. M.)

AFTERNOON SESSION—2:10 P. M.

1859

The Court: Mr. Rudykoff, did you find that?

Mr. Rudykoff: It is being brought down.

The Court: All right.

Mr. Rudykoff: I will call it to your attention.

The Court: All right.

Mr. Rudykoff: Eagle Stationery.

CARL BERKOW, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

1860

Direct Examination by Mr. Rudykoff:

Q. Mr. Berkow, what is your business? A. Printing.

Q. How long have you been in that business? A. About fifteen years.

Q. Where is your place of business? A. Orange, New Jersey.

Q. And what is the name of your company? A. Eagle Printing Company.

Q. What is your connection? A. Treasurer and sales-
man, et cetera. 1861

Q. Do you know the Daisart Sportswear? A. Yes.

Q. With whom did you deal? A. Mr. Smith.

Q. Do you see him in Court? A. Yes.

Q. Will you point to him? A. (Witness points to the defendant Smith.)

Mr. Rudykoff: Indicating the defendant George Smith.

Q. Now, did you print certain stationery for them? A. Yes, we did some bills and letterheads and things. 1862

Q. What company billheads were you directed to print? A. Well, we have some printing for the Mayflower—

The Court: Speak a little louder.

A. (Continuing) I did some printing for the Mayflower and then for Daisart Sportswear.

Q. Are you here pursuant to subpoena? A. Pardon me?

Q. Were you served with a subpoena? A. Yes.

Q. Did you produce certain books in response to the subpoena? A. Here they are (handing).

Q. Will you point out the charges that relate to the 1863
Mayflower Shop? A. Here you are (indicating).

Q. Have you located those charges? A. Here is one for the Mayflower.

Mr. Rudykoff: Will you mark this, please.

(Received and marked Government's Exhibit 130, for identification.)

1864 Mr. Rudykoff: Would you mark 8191 separately, please.

(Marked Government's Exhibit 131-A, for identification.)

Q. I direct your attention to 131-A for identification and ask you whether you printed the stationery described in Invoice No. 8191? A. Yes, it was printed in our place.

Q. And at whose request? A. Mr. Smith's.

Q. And was that stationery delivered to Mr. Smith? A. Yes.

1865 Mr. Rudykoff: I offer this in evidence.

Mr. Hart: No objection. May I see the date, please?

Mr. Rudykoff: June 6, 1942.

Mr. Siegel: I object to it on behalf of the defendant Deeb, not relevant or material as far as the defendant Deeb is concerned.

Mr. Hart: If it is in 1942, if the Court please, I object to it on the ground that it is not within the period specified in either the informations or the indictment.

1866 The Court: It appears to be over two and a half years prior to the first date of the indictment. Can you connect that with the evidence?

Mr. Rudykoff: It has already been connected. I would like to approach the Bench.

The Court: Yes, I wish you would.

(Conference between the Court and counsel at the Bench outside of the hearing of the jury and outside

of the hearing of the Reporter, after which the following took place within the hearing of the jury:) 1867

The Court: We will receive it at this time. We have just had a conference at the Bench, and, Mr. Hart, if at the close of the testimony of this witness you feel that it has not been properly connected you may renew your objection and make a motion then to strike it out.

Mr. Siegel: Will you note an objection for the defendant Deeb?

The Court: Yes, the same ruling on the objection. It is received at this time unless it is connected. 1868

(Marked Government's Exhibit 131-A in evidence.)

Q. Now, will you locate the charges that relate to Daisart Sportswear, Inc.? A. Here you are (handing).

Q. Have you located that? A. Yes, I have.

Mr. Rudykoff: Would you mark these separately, please.

(Marked Government's Exhibits 132 and 133, for identification.) 1869

Q. Did you deliver the letterheads described in 132 for identification and 133 for identification? A. Yes.

Q. Were you paid for the invoices rendered in their connection? A. Yes, I have been.

Q. At whose request on behalf of Daisart Sportswear, Inc. did you print the stationery described? A. Mr.—the gentleman here (indicating).

1870

The Court: Speak up, will you please, so we can hear you?

The Witness: This gentleman here (indicating).

The Court: Which gentleman?

Q. Point to him. A. Right there (indicating).

Q. You mean Mr. Smith? A. Yes.

Mr. Rudykoff: I offer these in evidence, being 132 for identification and 133 for identification.

Mr. Hart: No objection.

1871

Mr. Siegel: Objection on behalf of the defendant Deeb, no relevance and not binding on the defendant Deeb.

The Court: I assume these are going to be connected with the other papers in evidence?

Mr. Rudykoff: Yes, your Honor.

The Court: The objection is overruled.

Mr. Rudykoff: In response to that, the papers of this—if I may state it now?

The Court: Yes, I would like to hear the purpose.

Mr. Rudykoff: The purpose is merely to show that the Daisart Sportswear stationery was printed at the request of the defendant George Smith.

1872

Mr. Hart: There is no dispute about that.

Mr. Rudykoff: As far as the defendant Deeb is concerned, I will stipulate that that testimony is not to be considered in connection with the case against him.

The Court: The jury is so instructed, then, that this testimony is not to be considered against the defendant Deeb.

(Marked Government's Exhibits 132 and 133.)

Q. I show you a document which is part of Exhibit 30-A for identification and I ask you to examine that document. I direct your attention particularly to the face of it and I ask you whether you printed that billhead? A. Yes. 1873

Q. And is that one of the billheads printed at the request of George Smith? A. Yes.

Q. And is that one of the billheads printed for which you made the charge which appears in Government's Exhibit 131-A? A. Yes.

Mr. Rudykoff: I now offer 131-A—it is in evidence.

The Court: You have referred the witness to the exhibit. 1874

Mr. Rudykoff: It is in evidence as 39-A.

The Court: Do you object now, Mr. Hart, as to this exhibit?

Mr. Hart: I have no objection.

The Court: You have no objection?

Mr. Hart: No.

Mr. Rudykoff: You may inquire.

Mr. Hart: May I have the last three exhibits?

(Mr. Rudykoff hands exhibits to Mr. Hart.)

1875

Cross Examination by Mr. Hart:

Q. You were shown Exhibit 132 by the District Attorney and asked whether or not the letterheads called for in that particular invoice were delivered to Mr. Smith? A. They were delivered to them at that office.

Q. Exhibit 132 calls for more than letterheads, does it not? A. Oh, yes, there were a number of items.

Q. Did Daisart have printing done by you in addition to those letterheads? A. Yes; he had order forms.

1876 Q. Did they have shipping labels? A. Yes, and odd forms.

Q. And shipping memos? A. Yes.

Q. And bills? A. Yes.

Q. And statements and cards? A. Yes.

Q. Did they have piece work cards printed by you, cards with various notations on them? A. I would have to refer to that. I don't recall.

Q. Will you just look at this notation there—2,000 cards—do you know the type of cards they were? A. Offhand, I don't.

1877 Q. You could not tell? A. No.

Q. They are an index type of cards? A. It is an index stock.

Q. With printing on it? A. Yes.

Q. Specially ordered by the customer, is that right? A. That's right.

Q. Do you recall printing charge books for Daisart? A. Yes.

Q. And any other books? A. I don't recall the name—there was one there.

The Court: You can lead the witness.

1878 Q. Are these all of the bills during that period? A. Yes, those are all the bills.

Q. Are these all of the items that you printed for him or are there other items? A. These are the items that I have that we printed for him. There are business cards, letterheads, envelopes, shipping memo books, bills and statements here.

Q. Have you looked through your books here to see whether or not there are other things that you printed

for him? A. There are other things, yes, but I haven't got it here. These are numerically, that is all. 1879

Q. How did you just happen to bring these three books? A. I was requested to bring these numbers.

Q. Let's see now; you were requested by Mr. Rudykoff just to bring those three books? A. No, I have four.

Q. You have seen Mr. Rudykoff, then, before you came here today, is that right? A. When?

Q. You have seen him before you came here today? A. Oh, no.

Q. Whom did you see and who requested you to bring only four books?

1880

(Witness indicates Mr. Cogan.)

Q. Somebody served you with a subpoena and they just called for those four books? A. Well, those numbers and they are in those particular books.

Q. Before you got this subpoena to come here? A. Yes.

Q. Had you shown those books to somebody connected with the United States Attorney's Office? A. I don't know if it was the United States Attorney.

Q. They examined your books, is that right? A. That's right, some time back.

Q. And did you show them all of the charges for Daisart Sportswear? A. That's right. 1881

Q. You showed them a lot of other charges besides these, didn't you? A. There's a couple of others, yes.

Q. And they are not in Court? A. No, there's only one other here.

Q. But you do recall printing books, regular books that he used, such as sales books? A. Yes, that's all right here.

Q. And ledgers and other things? A. Yes.

Q. And they are not in there, are they? A. Well, these
1882 charge books, those are what we call sales books. I don't know whether he would give them any special name.

Q. Did you print the usual ledgers for him, ledger sheets? A. Well, I don't recall offhand.

Q. But there was a considerable amount of printing done? A. Yes, a lot of form work.

Q. Do you recall doing any other printing outside of stationery? Did you print on any army tool kits the words, "U. S. Army"? A. Yes.

Q. On the flaps of those tool kits? A. Yes, now that you mention it, there was a wording "U. S. Army" on
1883 some kind of brown canvas.

Q. Did you show them to the representatives who came over to see you, the bills for them? A. I am not—I wouldn't know whether to answer yes or no now.

Q. You showed them all your records? A. I showed them at the time as much as we could locate.

Q. How many of those kits, those army kits, would you say you printed "U. S. Army" on? A. A few thousand, probably.

Q. It ran into the thousands, didn't it? A. Yes.

1884 The Court: What was the material of those bags made of? Did you say canvas?

The Witness: Well, like an army canvas.

Q. You don't know whether it was canvas or not, do you? A. I said "like."

Q. It may have been duck? A. It might have been.

Q. It may have been gabardine? A. I don't know materials that well.

Q. And, as a matter of fact, you found that you were not

equipped to do that work properly, isn't that so, and you asked Smith to have the remainder of it done somewhere else? A. Yes, that required a special machine, probably not like ours. 1885

Q. And that was after you had done some of it running into the thousands? A. Yes, but that was all.

Mr. Hart: That is all.

Mr. Rudykoff: That is all, Mr. Berkow; thank you very much.

Mr. Hart: Thank you very much.

(Witness excused.) 1886

Mr. Rudykoff: The gentleman from the telephone company.

DANIEL C. HAYDEN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

Q. Mr. Hayden, do you have certain records relating to certain telephone numbers? A. I do. 1887

Q. May I see them?

(Witness hands papers to Mr. Rudykoff.)

Q. With regard to Murray Hill 3-1349 during 1944 and 1945, for what address was that telephone number assigned? A. 1150 Broadway. That's right, 1150 Broadway.

Q. And who was the subscriber? A. Barney Levine.

Q. During 1944 or 1945 was that number listed in the

name of L. A. Fox? A. No, there is no record of a listing
1888 for that.

Q. During the same period was that number listed in the name of George A. Howard? A. No listing for George A. Howard.

Q. And during that same period was it listed in the name of Albert J. Deeb? A. No listing.

Q. Is that the original record of the telephone company? A. That's right; this is the service record card.

Mr. Rudykoff: Will you mark it for identification, please.

1889

(Marked Government's Exhibit 134, for identification.)

Q. I show you Exhibit 134 for identification. Is that the card which has reference to the telephone number Murray Hill 3-1349? A. That is the card.

Q. And is that a card kept in the regular course of business of the telephone company? A. That's right.

Mr. Rudykoff. I offer it in evidence.

Mr. Hart: No objection.

1890

(Marked Government's Exhibit 135, for identification.)

Mr. Siegel: I object to it on the ground it is not binding on the defendant Deeb in any way.

The Court: The objection is overruled.

Mr. Siegel: This is a record under the name of Barney Levine.

The Court: I understand that that is a telephone number which appears on some invoice, is that correct? 1891

Mr. Rudykoff: That is correct, your Honor.

The Court: What invoices are those?

Mr. Rudykoff: My recollection is that those would be L. A. Fox. I will check that in just a moment.

The Court: They have been received in evidence?

Mr. Rudykoff: Yes, they have been.

The Court: It shows this phone number on them?

Mr. Rudykoff: Yes, sir.

The Court: The objection is overruled. 1892

Mr. Siegel: Exception.

(Marked Government's Exhibit 134, in evidence.)

Q. Would you please examine 135 for identification, and tell us whether that is the original record of the telephone company relating to Watkins 9-3868? A. Yes, that is our service record card.

Q. For what address was that listed? A. 1133 Broadway.

Q. During 1944 and 1945 in whose name was this listed? A. Israel Raichel.

Q. During that same period was it ever listed in the name of L. A. Fox? A. No listing for L. A. Fox. 1893

Q. Or George A. Howard? A. No listing for George A. Howard.

Q. Or Albert J. Deeb? A. No listing for Albert J. Deeb.

The Court: That is what telephone number?

Mr. Rudykoff: Watkins 9-3868.

I offer in evidence Exhibit 135 for identification.

(Marked Government's Exhibit 136, for identification.)

1894 Mr. Siegel: Same objection, Judge. It deals with a person by the name of Israel Raichel.

The Court: Do you say that this telephone number refers to a paper already received in evidence with that telephone number on it?

Mr. Rudykoff: Yes, on various invoices.

The Court: The objection is overruled.

(Marked Government's Exhibit 135 in evidence.)

Q. I show you Exhibit 136 for identification, and ask you if that is the original record consisting of two cards
1895 relating to the telephone listed under the name of Chelsea 3-7337? A. That's right.

Mr. Rudykoff: I offer 136 for identification in evidence.

Mr. Hart: No objection.

(Marked Government's Exhibit 136 in evidence.)

Q. Now, in whose name was Chelsea 3-7337 listed during the years 1944 and 1945? A. This is for Borah Brothers.

Q. At what address? A. 220 Fifth Avenue.

1896 Q. During that period in 1944-1945, did you ever have a listing for Albert J. Deeb? A. No listing for Albert J. Deeb.

Q. During that period did you have a listing for L. A. Fox for that number? A. No listing for L. A. Fox.

Q. And during that period did you ever have a listing for George A. Howard for that number? A. No listing for George A. Howard.

Mr. Rudykoff: You may inquire.

Mr. Hart: No questions.

Mr. Siegel: No questions. 1897

The Court: All right.

Mr. Rudykoff: Thank you very much.

(Witness excused.)

Mr. Rudykoff: The Fidelity Bank, please.

WILLIAM F. KRUMWIEDE, called as a witness on behalf of the Government, being first duly sworn, testified as follows: 1898

Direct Examination by Mr. Rudykoff:

Q. Mr. Krumwiede, what is your business? A. I am a bank clerk.

Q. Employed by whom? A. Fidelity Union Trust Company, of 755 Broad Street, Newark, New Jersey.

Q. For how long have you been identified with that bank? A. Twenty-one years in February.

Q. Have you produced certain papers in response to a subpoena? A. I have.

Q. And do they relate to the account of—will you show 1899
us what you have produced? A. In answer to the subpoena I have produced signature cards covering the account of Daisart Sportswear, a photostatic copy of the ledger card of the Daisart Sportswear, Inc., a photostatic copy of all deposit tickets made by Daisart Sportswear.

Q. With regard to the signature cards, would you let me have those, please. This relates to Daisart Sportswear, Inc. (indicating)? A. (Examining) That does.

Q. And these other documents also relate to that account?

1900 A. They do.

Mr. Rudykoff: May I have these marked separately, this as one exhibit, and the transcript as one exhibit, and the signature cards first.

(Marked Government's Exhibit 137, for identification.)

Mr. Hart: Could we speak to your Honor for a minute?

1901 The Court: Surely.

(Conference at the Bench between Court and Counsel not within the hearing of the jury and not within the hearing of the Reporter, after which the following took place:)

(Marked Government's Exhibits 138 and 139, for identification.)

Mr. Rudykoff: I offer Exhibit 137 for identification in evidence.

1902 Mr. Hart: No objection.

The Court: Is that the signature card of Daisart?

Mr. Rudykoff: Yes, your Honor.

The Court: Received.

(Marked Government's Exhibit 137 in evidence.)

Mr. Rudykoff: May I read from it?

The Court: Surely.

Mr. Rudykoff: This at the top is headed—and I am reading from Exhibit 137 in evidence—"Authorized signature of Daisart Sportswear, Inc." First line, typed, Ida Smith. Alongside, in writing, Ida Smith. Alongside of Ida Smith, president. Underneath, Ida Smith, typed, George Smith. Alongside of that, in writing, George Smith, and to the right of his name is, secretary. 1903

Underneath the typewritten name of George Smith is the typewritten name of Ida Smith, and to the right of that is, treasurer. Address, 99 Central Avenue, Newark, New Jersey. Business, manufacturing. Date, 2/21/45. 1904

Q. Is that the date on which the account was opened? A. The account was opened on the 16th of January.

Q. January 16th? A. 1945.

Q. 1945? A. Yes.

Q. I show you Exhibit 138 for identification. How do you describe those? A. They are photostatic copies of all deposit tickets made for the credit of Daisart Sportswear, Inc.

Q. I show you Exhibit 139 for identification. Tell us what they are. A. They are photostatic copies of the ledger records containing all debit and credit transactions on the account. 1905

Q. Do you have the originals of those? A. I do.

Mr. Rudykoff: I offer 138 and 139 in evidence.

Mr. Siegel: If your Honor please, may I have a general objection as to the defendant Deeb? I do not know that this is tied in in any way with the defendant Deeb.

The Court: The objection is overruled.

1906 Mr. Siegel: Is this offered as to the defendant Deeb, too?

Mr. Rudykoff: I am offering these as against both.

The Court: The objection is overruled.

Mr. Hart: No objection.

(Same marked Government's Exhibits 138 and 139, in evidence.)

Mr. Siegel: May I see what they are, Mr. Rudykoff?

1907 Mr. Rudykoff: Surely.

(Exhibits are handed to Mr. Siegel.)

Mr. Rudykoff: May we proceed in the meantime?

Mr. Siegel: Yes, sure; go ahead.

Q. Have you also produced your records relating to the account of George Smith? A. I have.

Q. Would you let us have the signature cards, the transcript and deposit slips, please?

1908 (The witness hands papers to Mr. Rudykoff.)

Mr. Rudykoff: Would you mark these, please?

(Same marked Government's Exhibits 140, 141 and 142, for identification.)

Q. When was the account of George Smith opened? A. On January 10, 1945.

Mr. Rudykoff: I offer Exhibit 140 for identification in evidence.

Mr. Hart: No objection.

The Court: Is that the signature card? 1909

Mr. Rudykoff: Yes, your Honor.

(Marked Government's Exhibit 140 in evidence.)

Q. I show you 141, for identification. Will you describe those, please? A. They are photostatic copies of the deposits accepted for the credit of the account of George Smith.

Mr. Rudykoff: I offer Exhibit 141 for identification in evidence. 1910

Q. I show you Exhibit 142 for identification. Will you please describe that? A. Photostatic copies of the ledger records covering all transactions, debits and credits of the account of George Smith.

Mr. Rudykoff: I offer Exhibit 142 for identification in evidence.

Mr. Hart: No objection.

(Marked Government's Exhibits 141 and 142, in evidence.) 1911

Q. Who was the person authorized to draw against the George Smith account? A. George Smith.

Q. At some time in 1946 were you requested to furnish certain information to an agency of the Government? A. That is right.

Q. Do you recall the date? A. Do you want the exact date?

1912

Q. If you have it. A. The exact date we do not have.

Q. Give us the approximate date then? A. About February of 1946.

Mr. Rudykoff: You may inquire.

Cross Examination by Mr. Hart:

Q. Do you recall or do your records show that when this account was opened in your bank in the name of George Smith it was by transfer from a bank in Montclair? A. The records do not show that.

1913

Q. They do not show that? A. No.

Mr. Hart: All right, thank you, that is all.

Redirect Examination by Mr. Rudykoff:

Q. Did you ever have an account for Daisart Manufacturing, if you recall? A. I do not recall.

Mr. Rudykoff: All right, thank you, that is all.

(Witness excused.)

1914

Mr. Rudykoff: First National.

WALTER C. BRITTEN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

Q. Mr. Britten, what is your occupation? A. I am employed by the First National Bank & Trust Company, Montclair.

Q. Have you produced certain records in response to a subpoena? A. I have. 1915

Q. Would you let me have those records?

(Witness hands papers to Mr. Rudykoff:

Q. To what accounts do they relate? A. They relate to Daisart Sportswear, Inc., Ida Smith and George W. Smith.

Q. Are the records relating to a particular account under a separate clip? A. They are.

Mr. Rudykoff: Will you mark these for identification. 1916

(Marked Government Exhibits 143, 144 and 145, for identification.)

Q. With regard to 143 for identification, what account does that relate to? A. That is Daisart Sportswear, Inc.

Q. The pink card is what? A. That is our permanent signature card.

Q. When was the account opened? A. The account was opened on October 22, 1943. It tallies with the ledger sheet. 1917

Q. Under the pink slip is a white card, what is that? A. That is the bookkeeper's record.

Q. Is that a signature card also? A. Yes.

Q. Is there a corporate resolution attached to that? A. There is, sir.

Q. And what date does it bear? A. 20th of October of 1943.

Q. And does it set forth the authorized signatures? A. It does, sir.

1918

Q. And you have also attached to 143 for identification a copy of the minutes of the corporation relating to the bank account? A. It is here (indicating).

Q. And these also have attached to it a resolution dated February 14, 1945? A. That's right.

Q. With regard to Daisart Sportswear, Inc., do you have the transcript? A. I do, sir.

Q. What is the first date and what is the last date on that transcript? A. The first date is October 22, 1943, and the last date is October 5, 1945.

1919

Mr. Rudykoff: I am going to place that under the same clip.

I offer 143 for identification in evidence.

Q. I direct your attention to Exhibit 144 for identification. To what account does that relate? A. Ida Smith.

Q. And the first card is what? A. The first card is her permanent signature card.

Q. And when was that account opened? A. The account was opened January 7, 1944 and that agrees with the ledger card.

Q. And when was it closed, if at all? A. It does not look from those signature cards that those were closed at all. It is still an open account. The last entry I have here is October 16, 1947, showing a balance.

1920

Mr. Rudykoff: I offer 144 for identification in evidence.

Q. I direct your attention to 145 for identification. Will you tell us to what account that relates? A. That relates to G. W. Smith.

Q. When was that account opened? A. September 14, 1942, which agrees with the ledger card.

Q. And was it closed? A. The signature card indicates it was closed on May 6, 1943, and that also agrees with the ledger card.

Mr. Rudykoff: I offer 145 for identification in evidence.

Q. I show you these exhibits and ask you whether they relate to the Daisart Sportswear account? A. They do, sir.

Mr. Rudykoff: By the way, have you examined Exhibit 143, Mr. Hart?

Mr. Hart: Yes, I have examined 143.

Mr. Rudykoff: I offer 143 in evidence.

(Marked Government's Exhibit 143 in evidence.)

Q. With regard to the Daisart Sportswear account which is Exhibit 143, was there any other signature card executed? A. There was, sir.

Mr. Rudykoff: Will you mark this, please.

(Marked Government's Exhibit 146, for identification.)

Q. I show you Exhibit 146 for identification, and ask you if that is the more recent card relating to Daisart Sportswear, Inc.? A. It is the most recent card.

Q. And the resolution annexed, what is that? A. It is also the most recent resolution.

1924 Mr. Rudykoff: I offer 146 for identification in evidence.

Mr. Hart: May I object specifically, if the Court please, to Exhibit 144 upon the ground that it is not the account of the defendant Smith or Daisart, and ask your Honor to look at that?

The Court: Is this the account of Ida Smith?

Mr. Hart: Yes.

The Court: I think her name appears as an endorsee on the back of some of these checks which have been received in evidence.

1925 Mr. Rudykoff: Yes, and they indicate deposits to her account.

Mr. Hart: On that exhibit?

Mr. Rudykoff: There are checks in evidence that you will see—

Mr. Hart: There is no proof whatsoever that she had any deposits in that particular bank or in any manner or shape is connected with these transactions.

Mr. Rudykoff: The checks indicate the bank in which they were deposited.

1926 The Court: Does it indicate it was deposited in this bank to the account of Ida Smith?

Mr. Rudykoff: That is right.

Mr. Hart: I do not recall any such checks.

The Court: I have not examined the 146 exhibit to determine the relevancy of this exhibit, but I will take Mr. Rudykoff's word for it.

Mr. Rudykoff: I will get the checks in the meantime—

The Court: You tell me that that is a fact?

Mr. Rudykoff: That is my recollection.

The Court: I will receive it. 1927

Mr. Hart: May I, before your Honor rules, say that he does not say that that is a fact. He says that it is his recollection. If it turns out that his recollection is wrong and your Honor is receiving all these things subject to connection and subject to recollection, are you going to tell the jury to strike all of this out and disregard that? They are only human and they won't know what has been ordered stricken out and what has been received subject to connection.

The Court: The jury appears to be very intelli- 1928
gent—

Mr. Hart: I think they are, Judge. There is no question about that. But I think the better practice would be to wait until—

The Court: My only purpose is to save time. You say that there are exhibits bearing endorsement of Ida Smith?

Mr. Rudykoff: That is correct, your Honor.

The Court: I recall that there are, too.

Mr. Rudykoff: There are more than two.

The Court: I meant, too, not two. I will receive 1929
it in evidence. Your objection is overruled.

Mr. Hart: I make the same objection as to 146 for identification.

The Court: I have not seen that. That is the most recent signature card of Daisart?

Mr. Rudykoff: Yes.

(Marked Government's Exhibit 144 in evidence.)

1930 Mr. Siegel: Of course, if your Honor pleases, I think we ought to have an objection noted for the defendant Deeb.

The Court: You object, then, to the reception of Exhibit 144 in evidence?

Mr. Siegel: That is right.

The Court: Your objection is overruled.

Now, 146 is offered in evidence and objected to by Mr. Hart.

Mr. Siegel: And I object to it, too.

The Court: And you too?

1931 Mr. Siegel: Yes.

The Court: The objections are overruled, and they are received in evidence.

(Marked Government's Exhibit 146, in evidence.)

Mr. Hart: Now, I object to 145 upon the ground that it relates to transactions which commence in 1942 and terminate in 1943 and have no bearing upon the subject matter of this proceeding.

The Court: This account was closed May 6, 1943. That is Exhibit No. 145. I think the objection is

1932 well taken as to that exhibit. It is not within the period alleged in the indictment.

Mr. Rudykoff: May I address some questions to the witness in regard to that?

The Court: Yes, to assist the Court in determining the ruling of this question objected to.

Mr. Rudykoff: Yes.

The Court: All right.

Q. Exhibit 145 for identification, whose account is that? 1933
A. That is the account of G. W. Smith.

Q. When was it opened and when was it closed? A. It was opened on September 14, 1942 and it was closed May 6, 1943.

Mr. Rudykoff: On that statement I will withdraw the exhibit.

The Court: Exhibit No. 145, for identification, is withdrawn and your offer in evidence is withdrawn.

Mr. Rudykoff: Yes, your Honor.

The Court: All right. 1934

Mr. Rudykoff: You may inquire.

Mr. Hart: I have no questions.

Mr. Siegel: I have no questions.

The Court: All right, thank you.

(Witness excused.)

Mr. Rudykoff: Miss Legnosky.

MARY J. LEGNOSKY, called as a witness on behalf of the Government, being first duly sworn, testified as follows: 1935

Direct Examination by Mr. Rudykoff:

Q. Miss Legnosky, what is your occupation? A. I am a stenographer.

Q. By whom are you employed? A. Bureau of Internal Revenue.

1936 Mr. Siegel: Who?

Mr. Rudykoff: Bureau of Internal Revenue.

Q. Please try to keep your voice up so that we can all hear you. During 1945 were you employed in the office of Price Administration? A. I was.

Q. In what capacity? A. As a stenographer.

Q. And during that time do you recall taking a statement by one George Smith? A. I do.

Mr. Rudykoff: Will you mark this for identification.

1937

(Marked Government's Exhibit 147, for identification.)

Mr. Rudykoff: Would you mark page 7 of 147 separately, please?

(Same marked Government's Exhibit 147-A, for identification.)

Q. How long were you employed by the O. P. A.? A. Five years.

1938 Q. And when were you transferred from the O. P. A. to some other division? A. September of last year.

Q. That would be when? A. You mean to another agency?

Q. Yes. A. September of last year.

Q. September, 1946? A. That's right.

Q. During April of 1946, did you take a statement which involved George Smith? A. I believe it was in April.

Q. I show you 147 for identification, and ask you whether

that is a transcript of the statement taken on that day? A. 1939
It is a copy of it.

Q. Was that a copy made at the same time as the original? A. I would say so.

Q. When was the statement taken with regard to the exact date? A. This particular statement?

Q. Yes. A. The day—it might have been on a Wednesday or a Thursday.

Q. I am asking for the date, what date of the month? A. I wouldn't be able to recall that.

Q. Would you look at the first page, the top. Do you see a date? A. The 30th day of April. 1940

Q. Did you take, with regard to the statement of Smith, did you take that statement? A. Yes, I did.

Q. Who was present? A. A Mr. Smith was making the statement, Mr. Turtz, I believe Mr. Hood was there, I am not sure; I can't recall.

Q. Do you have any independent recollection? A. No, I don't.

Q. Now, would you look at the headnote of that statement, which is 147 for identification. Read that and tell us first, does that refresh your recollection as to who was present? A. Yes, it does.

Q. Now, will you tell us who was present? A. Mr. Smith 1941
was there, and Mr. Turtz, Mr. Hood and myself.

Q. And who did Mr. Hood represent? A. Mr. Smith.

Q. What was the occupation of Mr. Hood? A. He represented—he was a counsel for Mr. Smith.

Q. Counsel? A. Well, he was from the counsel's office.

Q. Is Mr. Hood a lawyer? A. Yes.

Q. After taking that statement did you typewrite your notes? A. Not right that day.

1942 Q. How soon thereafter? A. The following week; some time during the following week.

Q. And after transcribing your notes, what did you do with the original and copy, if anything? A. The original and copies were turned over to Mr. Turtz.

Q. And did you before turning it over to Mr. Turtz examine your transcription? A. Yes.

Q. Did you compare it with your notebook? A. No, I did not compare it at that time.

Q. Did you examine the transcription? A. Yes, I did.

Q. At that time, so far as you now recall, was your tran-
1943 scription a fair and accurate transcription of your notes? A. Yes.

Q. After you turned the original and copies over to Mr. Turtz, do you recall whether you made any corrections? A. Mr. Turtz made corrections.

Q. And were those corrections made in accordance with the notes in your book? A. That's right.

Q. Do you now—and I am speaking of this moment—have any independent recollection of what Mr. Smith said on that day? A. I couldn't tell you offhand.

Mr. Rudykoff: I offer in evidence 147-A for iden-
1944 tification, commencing at page 7 to and including page 20, with the exception of colloquy between counsel, confining the offer to the questions put to Mr. Smith and the answers given by Mr. Smith.

The Court: Before you look at it, Mr. Hart:

By the Court:

Q. You are a stenographer, are you? A. Yes.

Q. You are able to take stenographic notes of questions asked of witnesses and answers made? A. To the best of my ability. 1945

Q. And thereafter to accurately transcribe them? A. Yes, sir.

Q. Did you take stenographic notes of questions asked of the defendant Smith and answers made by him on April 30, 1946? A. Yes, sir.

Q. Did you record them in a stenographer's notebook? A. Yes, sir, I did.

Q. Do you know where that notebook is? A. When I left the agency, I destroyed all my notebooks. 1946

Q. Prior to your leaving the agency did you typewrite this paper which has been offered in evidence? A. Yes, sir, I did.

Q. As it now stands, is it a true and accurate transcript of the questions asked of Smith and the answers made by him on April 30, 1946? A. As far as I saw the transcript, yes.

Mr. Hart: As far as what?

The Court: As far as she saw the transcript, yes. Do you want to look at the transcript?

Mr. Rudykoff: You may look at any part of this or all of it. 1947

The Court: We are particularly concerned with the pages that you have offered in evidence, 7 to 20.

Mr. Rudykoff: Particularly 7 to 20.

The Witness: If I go over this, I can refresh my memory.

The Court: What we are concerned with is this: you have a paper now in your hand which is Exhibit 147, for identification. Is that a true and correct

1948 transcript of the proceedings, the questions asked and the answers made on April 30, 1946?

The Witness: I would say, yes.

The Court: All right.

Mr. Hart: May I ask a few preliminary questions before it is received?

The Court: Yes. I thought that this might be an appropriate time to declare a ten minute recess, and then you could look over this statement. It might expedite the cross examination, if there is to be any.

Mr. Hart: Yes, it might.

1949 The Court: We will declare a ten minute recess. Counsel will, in the meantime, be afforded an opportunity to examine it.

Mr. Rudykoff: I certainly will turn it right over to them.

The Court: We will take a ten minute recess.

(The jury left the room.)

The Court: Gentlemen, I want to direct that if there are any requests to charge that they be submitted not later than ten o'clock tomorrow morning

1950 by all counsel.

Mr. Hart: Just a minute. I understand your Honor made that statement on the record, that requests to charge will have to be in by ten.

The Court: By ten o'clock tomorrow morning. The rules require that they be submitted before summation.

Mr. Hart: May I direct the Court's attention to the fact that it is half past three now. It is half past three at the present time. I do not know what time

Mr. Rudykoff will finish. I would like to have some idea. I cannot prepare my requests to charge until the Government has rested its case. 1951

Mr. Rudykoff: Of course, that depends upon cross examination. I cannot predict that. But, if possible, I will try to finish by six.

Mr. Hart: If we finish at six, your Honor, it is going to be humanly impossible to get my requests to charge ready at ten o'clock tomorrow morning.

The Court: I have spoken of this matter several times already to counsel, on Thursday and on Friday, and I do not want to push counsel beyond endurance, but at the same time I do not want to be put in a position of having the requests submitted to me so that I will have to examine a large number of requests in a very short time prior to the commencement of the summations. 1952

If you are not in a position to submit them tomorrow morning, you may make an application at that time for a further extension of time. However, I am not indicating that I will grant it, but I will give it very careful consideration.

Mr. Hart: Might I make myself clear on that, your Honor, without quibbling? 1953

The Court: Yes.

Mr. Hart: What I am trying to emphasize is this: if we leave here at six o'clock tonight, or after six o'clock tonight, I will not have the facilities for dictating and having transcribed the requests to charge. Although we were told throughout the trial that the requests should be in before the summation, we cannot prepare them until the Government—

1954

The Court: I will try to be as indulgent to counsel as possible, and I suggest that you have as many requests as you can ready tomorrow morning, and perhaps if you present a good reason, I will give you a short additional time.

Mr. Hart: This is off the record.

The Court: Yes.

(Discussion off the record.)

1955

The Court: The stenographer will note on the record that at the request of counsel the jury have been excluded for the purpose of permitting counsel to make certain motions with respect to Exhibit 147-A.

Mr. Hart: For identification.

The Court: Yes.

Mr. Hart: During the recess, if your Honor please, I examined Exhibit 147 for identification, which was offered in evidence by Mr. Rudykoff. An examination of this proposed exhibit reveals that on the 30th day of April, 1946, the defendant Smith appeared at the office of Price Administration, 1060 Broad

1956

Street, Newark, New Jersey, in response to a subpoena which was served upon him individually and also as an officer of Daisart Sportswear Company.

It also appears from page 6 that a discussion took place between Mr. Hood, who was representing the defendant Smith, and Mr. Turtz. Mr. Hood stated on behalf of Mr. Smith that he doubted the validity of the District Director's subpoena and that consequently it might be construed that Mr. Smith was voluntarily present at the hearing and that he con-

sequently could not claim privilege with the result- 1957
ing immunity.

Mr. Hood and Mr. Smith were assured by Mr. Turtz that Mr. Turtz, who represented the Office of Price Administration, took the position that the appearance by Mr. Smith pursuant to the subpoena would be construed as an involuntarily and compulsory appearance so that Mr. Smith's right to claim privilege and immunity would not be abridged.

It appears that throughout the course of the examination Mr. Smith claimed a blanket privilege, page 7, and Mr. Turtz informed him that no privilege had 1958
been claimed up to this point and that no immunity would result with respect to the answers made to the questions theretofore propounded.

It also appears from the examination that not only was Smith asked questions concerning transactions had by Daisart, but also transactions had by him and acts done by him as an individual. Not only was Smith asked concerning transactions and acts of his own, but transactions had by him with his wife, Ida Smith.

The questions also related to acts of the defendant Smith after Daisart Sportswear, Inc. had ceased to 1959
do business, or had gone out of business.

It appears from a reading of the entire transcript of the testimony adduced at the hearing that it covered essentially the matters set forth in and which form a basis of the informations and indictment in this case, and the defendant Smith, therefore, moves for a dismissal of the informations and the indictment against him upon the ground that by

1960 questioning him after he had been subpoenaed he was thereby given immunity for the acts concerning which he was questioned, which are the acts set forth in the informations and the indictment.

I therefore move that the informations and the indictment be dismissed upon the ground that Smith has heretofore been granted immunity; and move to amend the plea of the defendant so as to raise the plea of immunity from prosecution by virtue of the facts hereinbefore stated.

The Court: The Court at this time reserves decision on your motion. I will examine the entire ex-
1961 hibit, Exhibit 147, and render a decision later on. In the meantime you will proceed with the trial and the Court will receive that exhibit in evidence.

Mr. Siegel: May I at this time object on behalf of the defendant Deeb to the introduction of this exhibit into evidence upon the ground that it is not binding upon the defendant Deeb.

The Court: Your objection is sustained.

Mr. Siegel: And the District Attorney consents to that?

Mr. Rudykoff: Yes.

1962 The Court: Yes, the objection is sustained. The jury will be so advised.

Mr. Hart: May I ask, if there is such a thing in existence, that I be given a copy of this so that I may have it overnight?

Mr. Rudykoff: I do not have a copy, but I will be glad to arrange for it as soon as possible.

The Court: I think you are entitled to a copy of it. Mr. Rudykoff says that he will have a copy made for you of the entire exhibit.

Mr. Hart: Could we arrange with the reporter to have him make a copy of it overnight so that I may have it tomorrow? 1963

Mr. Rudykoff: I think perhaps we might be able to photostat it.

The Court: That would be even better.

The decision is reserved on your motion, Mr. Hart, and is sustained as to the defendant Deeb.

Mr. Hart: On my motion?

The Court: Decision is reserved on your motion and on your objection, and as to Deeb it is sustained, and it is received in evidence for the time being. 1964
Decision is also reserved on your motion to dismiss the informations and the indictment.

(Jury in box.)

The Court: Mr. Rudykoff, you are going to have photostats of this made?

Mr. Rudykoff: Yes, your Honor.

The Court: Will you have an extra one made for the Court?

Mr. Rudykoff: I will be glad to.

The Court: Now, ladies and gentlemen of the jury, during your absence argument was heard with 1965
reference to the admissibility of this exhibit, No. 147. The Court will admit it at this time and will reserve decision on the objection made by one of the counsel for one of the defendants.

This Exhibit 147-A, which is now offered in evidence, is received in evidence as against the defendants George Smith and Daisart Sportswear, Inc.

1966 only, and you are not to consider it in any way as evidence against the defendant Deeb.

Mr. Hart: Your Honor says, "It is received in evidence as against George Smith and Daisart." May I ask the Court to amend that and say, "It is received as to them"?

The Court: As to them.

Mr. Hart: Rather than the word "against."

The Court: Yes; as to them. Yes, that is right.

Mr. Rudykoff: May we have the witness recalled, please.

1967 ———

MARY J. LEGNOSKY, resumed the stand:

Mr. Rudykoff: You may inquire.

Of course, that offer, as I indicated, was limited to the questions and answers and does not include the colloquy and the discussions.

The Court: I have received in evidence such portions of 147-A as contain questions asked and answers made by George Smith on April 30, 1946.

Mr. Rudykoff: And for that purpose, I assume that that means that counsel may read whatever

1968 portions they deem pertinent to their case.

The Court: Yes, and it might be well to have a copy of that made excluding the colloquy, but just have the questions asked and the answers made.

Mr. Hart: With respect to the proposition of law that I raised—

The Court: That is all before the Court in that the entire paper has been marked for identification.

Cross Examination by Mr. Hart: 1969

Q. Were there times in the course of the transcription of this exhibit that you had difficulty in getting the exact statements made by individuals? A. No.

Q. If there were, you would have noted it? A. Yes, that's right; not with Mr. Smith.

Q. With anybody? A. Well, with Mrs. Smith, her voice was low. I had to ask her to repeat it.

Q. Was there a time when there was discussion that you could not get it? A. I got everything as best as I could and it is all in the transcript. 1970

Q. At no time was there any rapid exchange of statements? A. No, that's right.

Q. At no time was there any rapid exchange of statements that caused you to feel that you didn't get— A. No, everything was as I took it.

Q. Madam, please. I want to finish my question. At no time was there a rapid exchange of statements which caused you to write down the substance? A. No.

Q. Rather than the exact wording, is that correct? A. Yes.

Q. Would you look at this and refresh your recollection upon that point (handing exhibit to the witness)? A. (Examining) Yes, that's right, yes. 1971

Mr. Rudykoff: Will you indicate the page?

Mr. Hart: I am now referring the witness to page 6.

Mr. Rudykoff: That is not in evidence.

Mr. Hart: If the Court please, this is a question of credibility.

1972 Mr. Rudykoff: Of course, I just wanted to make it clear.

The Court: Counsel may ask it on cross examination.

Q. Have you read that particular paragraph? A. Yes, I have.

Q. Does that cause you to change your answer as to whether or not there was a rapid exchange of statements which made you unable to record the precise wording? A. No, I put that down as I got it there.

1973 Q. Did you put a statement down here that because of the rapid exchange of statements you were unable to record the precise wording? A. No.

Q. Pardon? Read this paragraph, will you, please (indicating)? A. (Examining paper) Oh, this particular paragraph, yes.

Q. Then there was an occasion where you were unable to put down the precise wording because of the rapid exchange of statements, is that correct? A. That's right; in that paragraph—

Q. So you want to change your answer now; there was an occasion? A. That's right, yes.

1974 Q. When did you destroy your notebook? A. Pardon me?

Q. When did you destroy your notebook? A. When I left the agency, the O.P.A.

Q. How long ago was that? A. In September, 1946, when I transferred.

Q. Well, you knew, did you not, that there was to be use made of this statement or there might be use made of this statement later on? A. I didn't. I mean, after I took the

transcript and I gave it no further thought. I mean, that was just in line of duty. 1975

Q. After you made the transcript you submitted it to your superior, did you not? A. Yes, that's right.

Q. And he made corrections in it, did he not? A. That's right.

Q. Did he make corrections from your notebook? A. That's right.

Q. Did he read your notebook? A. No, he didn't, but I read it.

Q. You mean you made mistakes in typing it? A. In typing it, yes, and he went over it and he asked me to refer to my books. 1976

Q. When he went over it he did not have your notebook before him, did he? A. He didn't have it, no; I had it.

Q. And you mean you copied it inaccurately the first time from your notebook? A. I read it off that.

Q. And when you copied it inaccurately— A. I referred to my notebook.

Q. Madam, will you please let me finish one question. When you copied it inaccurately your attention was called to the inaccuracies by your employer, who did not have the notebook before him, is that right? A. And would I refer to my notebook. 1977

Q. You mean— A. When it was being read I was asked to refer to my notebook, to that particular statement and I did read it over.

Q. When did you read your notebook last? A. When did I read it? When I made up the transcript.

Q. In 1946? A. That's right.

Q. How many days after the examination? A. It was the following week it was transcribed.

1978 Q. How many corrections did your superior make in that? A. I couldn't tell you that offhand.

Q. Did he make a number of corrections in it? A. Well, I couldn't give you an accurate figure on that.

Q. But he did make corrections, didn't he? A. That's right.

Mr. Hart: That is all.

The Court: Were those corrections in accordance with your notebook?

The Witness: Yes.

1979 The Court: As the paper now stands is it a true and accurate transcript of your recording of the questions asked and the answers made?

The Witness: As I had it in my notebook.

The Court: And you put it in your notebook accurately?

The Witness: Yes, sir, as best I could take it down. That's the way it appears.

By Mr. Hart:

Q. As best as you could take it down? When you transcribed it you took it from your notebook, did you? A. Yes, sir.

1980 Q. Did you transcribe it accurately from your notebook? A. I transcribed it from my notebook.

Q. Did you type it accurately from your notebook? A. As I had it, yes.

Q. At the time you typed it it was just as you had it in your notebook? A. Yes, sir.

Q. How long after you typed it just as you had it in your notebook did you give it to your superior? A. Right after I typed it.

Q. At that time it was just as you had it in the notebook? A. That's right. 1981

Q. Well, if it was just as you had it in your notebook when you gave it to your superior and he made changes in it, was it still just as you had it in your notebook? A. Pardon me, he didn't make changes in it. He asked me to refer to my notebook. As I was typing it, I could have left out a line or a few words or something like that, and he asked me to refer back to my notebook.

Q. How many changes did your superior make? A. I couldn't tell you that.

1982

The Court: Any other questions?

Redirect Examination by Mr. Rudykoff:

Q. Miss Legnosky, did you furnish a copy of that testimony, which is 147-A for identification, to anyone? A. What was that question?

Q. Did you furnish a copy of the testimony which is 147-A for identification—in evidence, rather, to anyone representing the defendant Smith? A. Yes, I believe a copy was mailed to Mr. Hood.

Q. Did Mr. Hood get in touch with you? A. Not with me, no; with the gentleman who succeeded Mr. Turtz. 1983

Q. When was that that you mailed it to him? A. It could have been in May because Mr. Turtz—

Q. Was it in 1946? A. That's right.

Q. And did you mail that to Mr. Hood? A. That's right, at Mr. Turtz' instructions from the New York office.

Mr. Rudykoff: That is all.

1984

Recross Examination by Mr. Hart:

Q. And you mailed it to him with the changes that Mr. Turtz made? A. What is that?

Q. Did you mail it to him with the changes that Mr. Turtz had made in it? A. The exact copy as you have.

Q. That is, with the changes Mr. Turtz made? A. That's right.

Mr. Rudykoff: That's all.

1985

(Witness excused.)

David Kassin, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

Q. Mr. Kassin, what is your business? A. Handkerchief jobber.

Q. A little louder, please. A. Handkerchief jobber.

Q. Was that your business—

1986

Mr. Siegel: Handkerchief what?

Mr. Rudykoff: Handkerchief jobber.

Q. Was that your business in 1945? A. Yes, sir.

Q. During 1945 were you buying textiles for handkerchiefs? A. That's right.

Q. When you say "jobber," does that mean that you manufactured or had others manufacture for you? A.

Well, we usually bought from manufacturers and we manufactured very little ourselves. 1987

Mr. Rudykoff: Will you mark this?

(Marked Government's Exhibit 148, for identification.)

Q. I show you 148 for identification, and ask you if those documents relate to a purchase of materials made on or about May 17, 1945 (handing)? A. (Examining) Yes.

Q. And do those documents include two checks in payment of the materials described? A. Yes, sir. 1988

Mr. Rudykoff: I offer in evidence 148, for identification.

(Marked Government's Exhibits 149 and 150, for identification.)

Q. Please examine the documents under 149 for identification and tell us whether they relate to a purchase of materials on or about April 2, 1945, or, is that April 5? A. April 5.

1989

Q. April 5, 1945. A. Yes, sir.

Q. The answer is what? A. Yes.

Q. And the checks attached, are they in payment of the materials? A. Yes, sir.

Q. A little louder, please, so we can all hear you? A. Yes, sir.

Mr. Rudykoff: I offer in evidence 149.

1990 Q. Would you look at 150 for identification, please, and tell us if they relate to a purchase of materials by you on or about May 10, ~~1945 (handing)~~? A. (Examining) They do.

Q. And are the checks—or rather, the check attached in payment of the materials described? A. Yes, sir.

Q. Were the documents you have examined and identified kept by you in the regular course of your business? A. I beg your pardon?

Q. Were these documents which you have examined kept by you in the regular course of your business? A. Yes,

1991 sir.

Mr. Rudykoff: I offer in evidence 150.

Mr. Siegel: On behalf of the defendant Deeb, with respect to Exhibit 148, I object to the introduction of this exhibit on the ground that it is not binding upon this defendant. I further object to the introduction into evidence of Exhibit 149, a transaction with a Mr. Retzker, as not being binding upon this defendant Deeb. I further object to the introduction into evidence of Exhibit 150 on behalf of the defendant Deeb as not being binding upon him.

1992 The Court: May I look at those three exhibits?

Mr. Hart: And I object to the three of them on the grounds specified with respect to the previous exhibits.

The Court: What previous exhibits?

Mr. Hart: The previous exhibits which I have not consented to their introduction in evidence on the ground that they are not related to the defendant Smith or Daisart.

(Exhibits are handed to the Court.)

The Court: 148 is received in evidence as to both defendants, and the objections are overruled. 1993

(Government's Exhibit 148 received in evidence.)

The Court: Exhibit 149 is received in evidence and the objections are overruled.

(Marked Government's Exhibit 149 in evidence.)

The Court: 150 is received in evidence, and the objections are overruled. 1994

(Marked Government's Exhibit 150 in evidence.)

Mr. Rudykoff: You may inquire.

Cross Examination by Mr. Hart:

Q. Do you know the defendant Smith? A. No, sir.
Q. Did you ever see him? A. No, sir.

1995

Mr. Hart: I want to make this observation, Mr. Siegel, before you proceed.

Mr. Siegel: All right.

Mr. Hart: There are again pencilled notations on the back of these exhibits.

The Court: The pencilled notations will be eliminated before they are received or shown to the jury at the conclusion of the trial. Will you see that that is done with all exhibits, Mr. Rudykoff?

1996 Mr. Rudykoff: Yes, your Honor, I have that in mind.

The Court: All right; the pencilled notations are not received in evidence.

Cross Examination by Mr. Siegel:

Q. I show you this Government's Exhibit 149, a transaction with a Mr. Retzker. Did you deal with a person by that name? A. I beg your pardon?

Q. Did you take care of the purchases for your firm?

1997 A. More or less, my partner and I.

Q. What is the name of your partner? A. Seruya.

Q. Did you both make purchases or did you make all of them? A. Well, we both made them.

Q. Do you recall actually dealing with Mr. Retzker, from whom you received a bill on April 5, 1945? A. I think it was him. It must have been him.

Q. Was Mr. Retzker alone when you transacted your business with him? A. Yes, sir.

Q. I show you Government's Exhibit 148 and ask you whether you dealt with a Mr. Howard, who is reflected on that bill? A. I believe it was him.

1998 Q. Was there anybody else with Mr. Howard at the time when you transacted your business with him? A. I don't believe so.

Q. I show you Government's Exhibit 150, a transaction with a person by the name of George A. Howard, did you transact this business with him as reflected in this invoice? A. Yes.

Q. And was he alone when you had this transaction with him, as you can recall? A. I think he was.

Q. You never did any business with a Mr. Deeb, did you? 1999
A. No, sir.

Mr. Siegel: That is all.

Mr. Rudykoff: That is all, Mr. Kassin.

(Witness excused.)

Mr. Rudykoff: May we have the carrier, please?

The Court: Mr. Rudykoff, how many more witnesses have you?

Mr. Rudykoff: This is the last of the witnesses 2000
except for the charts.

The Court: I would like if possible to complete the evidence tonight.

Mr. Rudykoff: Of course, I will do whatever I can.

The Court: But I do not want to impose on anybody.

EDWARD K. BAILEY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff: 2001

Q. Mr. Bailey, what is your occupation? A. Letter carrier.

Q. How long have you been so employed? A. Five years.

Q. Is 1133 Broadway in your tour? A. Yes, it is.

Q. And how long have you had that tour? A. Approximately two years.

2002 Q. How often per day do you attend at 1133 Broadway? A. Four times.

Q. Do you know of any person who was located at that address, 1133 Broadway, during the time that you had serviced that building known as L. A. Fox? A. No, I don't.

Mr. Siegel: If your Honor pleases, what period has the witness reference to?

The Court: Yes, the objection is sustained.

How long have you been delivering on this route to 1133 Broadway?

2003 Mr. Rudykoff: He stated two years, your Honor.

The Witness: Two years.

The Court: Did you deliver there when you began your deliveries?

The Witness: We have what we call in the office a floater and a regular route. I have been regularly delivering for eighteen months, and temporarily delivering before that, making up a total of two years.

The Court: Two years?

The Witness: That's right.

The Court: That would be after the period named in the indictment.

2004 Mr. Rudykoff: No, the indictment—

The Court: Excuse me, that is right. It runs down to March 31, 1946.

Q. During that period did you know of any individual known as L. A. Fox? A. I did not.

Q. Did you ever deliver any mail for any individual by that name at that address? A. No.

Q. During that period did you ever see any change of address for an individual of that name at that address? A. No. 2005

Mr. Rudykoff: You may inquire.

Mr. Hart: I have no questions.

Cross Examination by Mr. Siegel:

Q. 1133 Broadway is a fairly large building, isn't it? A. Sixteen stories.

Q. And there are hundreds of tenants in that building, aren't there? A. About. 2006

Q. And there are probably hundreds of sub-tenants in that building, too—I mean, they share space in other offices? A. Sub-tenants?

Q. Yes, sub-tenants. A. Probably so.

Q. And there were other letter carriers making deliveries or taking care of deliveries in that building besides you, weren't there? A. Two others besides myself.

Q. And when for the first time was the name of L. A. Fox called to your attention? A. I had an inquiry on it about a week ago: did I know L. A. Fox? Which I said, no. 2007

Q. And before that time nobody ever directed your attention to a name L. A. Fox? A. Never heard it mentioned.

Q. When you served these hundreds of people, it is pretty hard to remember each one, isn't? A. Not necessarily so. When we serve them every day it becomes automatic. We see a letter and we know.

Q. You mean if you are servicing five or six hundred people in one building that you can remember the names of

2008 all of those tenants in that building? A. If they rent space in there as tenants, positively.

Q. Did you know a Mr. Jonas in that building? A. No.

Q. Did you know a Mr. Berk in that building? A. No.

Q. Did you know that there were many tenants in that building receiving phone service, having phone service for people? A. Yes, I do.

Q. And receiving mail for a number of people even though they weren't actually listed there? A. We have one firm that takes care of all of that mail.

2009 Mr. Siegel: That is all.

Cross Examination by Mr. Hart:

Q. When was the first time that you delivered mail in that building? A. Two years ago.

Q. When you say two years ago, could you be a little more specific? A. You say that sixteen months ago you started delivering regularly. A. The route was assigned to me permanently at that time.

Q. Sixteen months ago? A. Before that time I delivered mail in there on and off as a floater.

2010 Q. It was permanently assigned to you about sixteen months ago, is that correct? A. Correct.

Q. Before that time you delivered it on and off? A. On and off.

Q. To go back sixteen months, let us say, that would be about July of 1945? A. No, that would be 1946.

Q. 1946, pardon me. A. Right.

Q. And prior to that time you knew nothing about the building? A. Well, not as much as I do at present.

Q. You knew there was such a building but you hadn't delivered there? A. I knew some of the firms but not like I know them now. 2011

Q. But had you delivered there prior to July of 1946? A. Yes, I did.

Q. Intermittently? A. That's right.

Mr. Hart: That is all.

The Court: Any further questions?

Mr. Rudykoff: No further questions, thank you.

(Witness excused.) 2012

Mr. Rudykoff: May I at this time read 147-A?

The Court: Yes. You will omit the colloquy.

Mr. Rudykoff: I would like to indicate the date which appears.

The Court: That is April 30, 1946.

Mr. Hart: As I understand it, your Honor has reserved decision on my motion with respect to that exhibit?

The Court: Yes.

Mr. Hart: And on my objection with respect to that? 2013

The Court: Yes.

Mr. Hart: And I object to it being read until your Honor determines whether or not it is properly admissible.

The Court: Well, I have determined to accept it at the present time and I will reserve decision. It will be received in evidence and I will reserve decision on whether or not I won't on my own motion strike it out and grant the motion that you made.

Reading of Excerpts from Exhibit 147-A

2014 Mr. Rudykoff: (Reading) "Mr. Turtz: Mr. Smith, do you solemnly sweat to tell the truth, the whole truth and nothing but the truth, so help you God?

"Mr. Smith: I do.

"Question: What is your full name?

"Answer: George Smith."

The Court: Mr. Hart, I suggest that you stand over there to see if there is any colloquy there that you do not want read.

2015 Mr. Hart: As soon as he departs from a question and answer then I will step over. I think I can follow it that way.

The Court: All right.

Mr. Rudykoff: (Reading)

"Question: Where do you live?

"Answer: Presently at the Robert Treat Hotel. Permanent address is 99—12th Avenue, Belmar, New Jersey.

"Question: What business are you in?

"Answer: Not any.

2016 "Question: Are you employed at the present time?

"Answer: No.

"Question: How long a time have you been unemployed and out of business?

"Answer: Since October, 1945.

"Question: Were you connected with the Daisart Manufacturing Company?

"Answer: I was.

"Question: In what capacity?

"Answer: As manager.

"Question: With respect to Daisart Sportswear, Inc., you have no records? 2017

"Answer: No records at all, that is, no records at the present time.

"Question: Were there any records kept by Daisart Sportswear, Inc.?

"Answer: Definitely.

"Question: Where are those records?

"Answer: When Daisart Manufacturing Company went out of business all records that I thought were not pertinent and that I did not need were destroyed. Records that I kept were shipped and stored at home. 2018
I had them at that time at 111—14th Avenue, Belmar. In the interim, the house was sold and the records lost or misplaced.

"Question: So you state, as a fact, that there are no longer in existence any records called for by this subpoena as regards Daisart Sportswear, Inc.?

"Answer: To the best of my knowledge, yes.

"Question: You would have knowledge of those records if they were in existence?

"Answer: My answer to that question is that there are no records.

"Question: Mr. Smith, you were required to produce pursuant to a subpoena served on behalf of George Smith, individually, as distinguished from your connection with Daisart Sportswear, Inc., or Daisart Manufacturing Company, all purchase records, sales records, invoices, journals, ledgers, cash disbursement books, accounts receivable ledgers, accounts payable ledgers and any and all other records and documents pertaining to the purchase, sale, 2019

2020 manufacture, fabrication and/or finishing piece goods, materials, fabrics, from January 1, 1945, up to the present time. Have you produced those records?

"Answer: They are in the same category as the previous statement as to records.

"Question: Do you make any distinction, Mr. Smith, between the Daisart Sportswear, Inc., and Daisart Manufacturing Company?

"Answer: There is no such thing as Daisart, Inc., Daisart Manufacturing Company.

2021 "Question: Is there as a Daisart Sportswear, Inc.?

"Answer: There is.

"Question: Are these three separate companies?

"Answer: There is only one.

"Question: Daisart, Inc., is that the same as Daisart Sportswear, Inc.?

"Answer: Daisart Sportswear, Inc. is the only one.

"Question: There is a Daisart Sportswear, Inc.?

"Answer: That is the full and complete name of that company.

"Question: Is there a Daisart, Inc.?

"Answer: There is not.

2022 "Question: Is there or was there a Daisart Manufacturing Company?

"Answer: There was a Daisart Manufacturing Company.

"Question: Confining ourselves to Daisart Sportswear, Inc., since you have stated that Daisart Manufacturing Company went out of existence in 1943 or 1944, Daisart Sportswear, Inc., is a corporation? Is that correct?

"Answer: Yes.

Reading of Excerpts from Exhibit 147-A

"Question: And who are the officers and directors of Daisart Sportswear, Inc.? 2023

"Answer: I was all of them.

"Question: You were the sole stockholder and the officers and director? You were the corporation sole owner?

"Answer: Yes.

"Question: Daisart Sportswear, Inc. was a N. J. Corporation?

"Answer: Correct.

"Q. And what business was Daisart Sportswear, Inc. engaged in? 2024

"Answer: The manufacture, purchase, sales of textiles, and allied products.

"Question: And Daisart Sportswear, Inc. did make sales of textiles, fabrics?

"Answer: Correct.

"Question: Did they sell any other commodity?

"Answer: Sell clothing in various phases.

"Question: It also engaged in textiles?

"Answer: Any time it had a surplus of materials on hand. Release that.

"Question: Is Daisart Sportswear, Inc. in existence? 2025

"Answer: No.

"Question: Was it dissolved?

"Answer: It was not dissolved, but was not actively engaged in since October, 1945.

"Question: Daisart Sportswear, Inc., as a legal entity, is still in business?

"Answer: It is not at the present time actively engaged in any business.

Reading of Excerpts from Exhibit 147-A

2026 "Question: Does Daisart Sportswear, Inc. have a board of directors?

"Answer: I am vague on that. I imagine it did but never functioned.

"Question: Who were the directors?

"Answer: As far as I know, I was all of that.

"Question: Does Daisart Sportswear have any stockholders?

"Answer: No.

"Question: Does Daisart Sportswear, Inc. maintain a set of books in connection with its activities?

2027 "Answer: It did.

"Question: Where were they kept?

"Answer: At the place of business, 99 Central Avenue, Newark.

"Question: Where is the registered office of Daisart Sportswear, Inc.?

"Answer: I was the registered officer.

"Question: Where was the registered office?

"Answer: 99 Central Avenue, Newark. Daisart Sportswear, Inc.

"Question: And the books of the company were kept at that address also?

2028 "Answer: Yes.

"Question: Where are the books of Daisart Sportswear, Inc. at the present time?

"Answer: I don't know.

"Question. Who had control of the books and records of Daisart Sportswear, Inc.?

"Answer: I did.

"Question: What did you do with them?

"Answer: They were stored at my home.

Reading of Excerpts from Exhibit 147-A

"Question: Where was that? 2029

"Answer: 111—14th Avenue, Belmar.

"Question: Tell us again what happened to them?

"Answer: In January or February of 1946, that home was sold. I was at that time in California. Instructions were given by me to remove all personal belongings and vacate the property.

"Question: To whom did you give those instructions?

"Answer: To my truck driver. He did so and brought them to my hotel. When we arrived home I paid no attention to what had been brought until 2030
the occasion arose for me to look for them. The date that the subpoena was served. We have since looked for them and have not been able to locate them yet. It is my belief that they were left there. At 111—14th Avenue.

"Question: When did that take place?

"Answer: Some time in January or the beginning of February, 1946.

"Question: If those books would be found, would you have any objection to our examining them?

"Answer: With the greatest of pleasure. They were examined by War Production Board, War 2031
Labor Board, State Labor Department, that is all.

"Question: When did those examinations take place?

"Answer: Some time in 1945.

"Question: While you were at 111—14th Avenue?

"Answer: Before I moved. They were examined at 99 Central Avenue.

Reading of Excerpts from Exhibit 147-A

2032 "Question: Did Daisart Sportswear, Inc. engage in the manufacture of textiles?

"Answer: They did not.

"Question: Did Daisart Sportswear, Inc. produce or purchase yarns?

"Answer: They did not.

"Question: Did Daisart Sportswear, Inc. buy any textiles, fabrics or materials for the sole purpose of reselling same?

"Answer: They did not.

"Question: Did Daisart Sportswear, Inc. sell only
2033 those textiles and fabrics which were considered surplusages from their clothing manufacturing operations?

"Answer: Not clothing operations. From various operations.

"Question: They had operations other than clothing?

"Answer: Correct.

"Question: What were those operations?

"Answer: Manufacturing, processing ammunition bags.

"Question: And were the manufacturing of am-
2034 munition bags directed performed for the U. S. Government or as a sub-contractor or contractor for other concerns who manufactured directly for the Government?

"Answer: Yes.

"Question: What was the name of that other company?

"Answer: Metals Disintegrating Company.

Reading of Excerpts from Exhibit 147-A

"Question: With respect to Metals, did Daisart Sportswear, Inc., or any of its officers, have any interest in the Metals Disintegrating Company? 2035

"Answer: None whatsoever. Daisart Sportswear, Inc. was solely and exclusively a contractor for Metals.

"Question: Was Daisart Sportswear, Inc. solely and exclusively a contractor?

"Answer: It contracted for many other concerns besides that. That was Metals that had a direct Government contract and contracted for them.

"Question: You say Daisart Sportswear, Inc. contracted from many other companies. State for us the names of these other companies. 2036

"Answer: Lenn Sportswear, Inc., Mickey Finn Clothing, Kit Packing Co., London H. C. Co., London Vest Co. and many others whose names slipped my mind.

"Question: With respect to any of these companies, which you have mentioned, or any which you at the moment do not recall, did Daisart Sportswear, Inc. have any interest in any of the companies or any of Daisart's officers have any interest?

"Answer: None whatsoever. 2037

"Question: And you state the fact to be that Daisart Sportswear, Inc. at no time purchased fabrics, materials, for the sole purpose of reselling these fabrics?

"Answer: Correct.

"Question: But you do state the fact to be that sales of materials and fabrics were made by Daisart Sportswear, Inc.?

"Answer: Correct.

2038 "Question: Can you tell me how Daisart Sportswear, Inc. arrived at its selling price with respect to the items that it sold?

"Answer: Since it was surplus, it was sold at the price billed to me plus freight and haulage and less discount allowed to me.

"Question: In other words, Daisart Sportswear, Inc. sold at cost plus freight less any discounts, cash or otherwise, received by Daisart Sportswear, Inc.?

"Answer: Correct.

"Question: For the year 1945, what was the dollar
2039 volume of sales of fabrics and materials made by Daisart Sportswear, Inc.?

"Answer: I have no knowledge of that. Without records I cannot tell.

"Question: Are there such records available?

"Answer: There are not to my knowledge.

"Question: Can you tell the names of the persons or companies who purchased fabrics or piece goods or materials from Daisart Sportswear, Inc.?

"Answer: Offhand I don't know. Not without consulting records.

"Question: You don't remember the names?

2040 "Answer: Not offhand. I could name some, but I would rather not answer.

"Question: How many employees did Daisart Sportswear, Inc. have?

"Answer: On an average of about fifty.

"Question: And among those fifty, was there an employee by the name of Ida Smith?

"Answer: No.

Reading of Excerpts from Exhibit 147-A

"Question: Was there an employee by the name of Jeffrey Baker? 2041

"Answer: Never.

"Question: Did either Ida Smith or Jeffrey Baker work for the Daisart Manufacturing Company?

"Answer: At no time.

"Question: Daisart Manufacturing Company was an individual doing business with a trading name?

"Answer: Correct. That was before 1945. I don't see where it is pertinent.

"Question: In connection with its manufacturing operations, Daisart Sportswear, Inc. had to acquire certain materials and fabrics? Can you give me the 2042 names of the persons or firms from whom those fabrics were purchased?

"Answer: A. Steinman & Co., Fourth Avenue, New York City.

"L. Lazarus & Co., New York City. Southeastern Cottons.

"There are several others, but I cannot remember them.

"Question: There were others? And in connection with its purchases from the firms that you have mentioned and with respect to those which at the moment you don't recall, did Daisart Sportswear, Inc. re- 2043 ceive invoices from these suppliers?

"Answer: They did.

"Question: Did Daisart Sportswear, Inc. pay for its purchases by check or cash?

"Answer: By check at all times.

Reading of Excerpts from Exhibit 147-A

"Question: Where did Daisart Sportswear, Inc.
2044 bank?

"Answer: Fidelity Union Trust Company, Newark, N. J.

"Question: Was Daisart Sportswear, Inc. at any time compelled to pay money on the side?

"Answer: At no time.

"Question: I believe you stated Daisart at all times received invoices and made all its payments by check?

"Answer: Correct.

"Question: For how long a time has Daisart
2045 Sportswear, Inc. been engaged in selling fabrics?

"Answer: From about April or May of 1945.

"Question: When was Daisart Sportswear incorporated?

"Answer: Some time at the end of 1943 or 1944.

"Question: Was the incorporation of Daisart Sportswear, Inc. simultaneously with the termination of Daisart Manufacturing Company?

"Answer: Correct.

"Question: Was it a successor to Daisart Manufacturing Company?

"Answer: It was.

2046 "Question: Where is the premises occupied by Daisart Sportswear, Inc.?

"Answer: At 99 Central Avenue, Newark, N. J.

"Question: Are those premises owned by Daisart?

"Answer: They are not. They were leased from Real Estate Management.

"Question: When did Daisart Sportswear, Inc. leave the premises at 99 Central Avenue?

"Answer: On or about October, 1945.

Reading of Excerpts from Exhibit 147-A

"Question: Has Daisart Sportswear, Inc. occupied other premises for business purposes? 2047

"Answer: No.

"Question: Did Daisart Sportswear, Inc. maintain Social Security account for its employees?

"Answer: It did.

"Question: Kept a separate bank account?

"Answer: It did not.

"Question: Considered a certain portion of its bank account as allocated for that purpose?

"Answer: Correct.

"Question: On behalf of its employees?

"Answer: Yes. 2048

"Question: Has Daisart Sportswear, Inc. filed its Federal Income Tax for 1945?

"Answer: It has not as yet due to inaccurate records.

"Question: Is it in the process of preparing those records at the present time?

"Answer: It is.

"Question: From what records?

"Answer: From the bank accounts and statements.

"Question: Who has these bank accounts and statements? 2049

"Answer: They are kept by my accountant.

"Question: Is he the accountant for Daisart Sportswear, Inc.?

"Answer: Yes.

"Question: What is his name?

"Answer: Louis Wiener, 17 William Street, Newark, N. J.

Reading of Excerpts from Exhibit 147-A

"Question: Precisely what records does he have of
2050 Daisart Sportswear, Inc.?

"Answer: To the best of my knowledge, he has Social Security Records and statements from the bank that he had gotten with my authorization.

"Question: And will those records reflect the sales of fabrics and materials, etc.?

"Answer: Those records will reflect total overall business of Daisart Sportswear, Inc., and that would include sales and purchases of all materials, trimmings, accessories, etc.

"Question: May I ask you why you did not pro-
2051 duce those records?

"Answer: I do not possess those. They are not valid in the absence of bank reports. I do not specify separate items.

"Question: The fact is, Mr. Smith, that on the Social Security records of Daisart Sportswear, Inc. you will be able to reproduce or a duly authorized person will be able to reconstruct Daisart's labor cost?

"Answer: Correct.

"Question: And from its records and deposits,
2052 Daisart Sportswear, Inc. will be able to reconstruct its sales?

"Answer: Total over-all sales.

"Question: And it is on that basis of the reconstructed sales you intend to file income tax return?

"Answer: Correct.

"Question: What was the total volume of sales of Daisart Sportswear, Inc. from all activities in 1945?

"Answer: To the best of my knowledge, about $200,000.

Reading of Excerpts from Exhibit 147-A

"Question: Daisart Sportswear, Inc., as a corporation, I assume, have certain corporate records such as books, certificate of incorporation and date! 2053

"Answer: Correct.

"Question: Are those records still in existence?

"Answer: To the best of my knowledge, no.

"Question: Mr. Smith, your stated that Daisart Sportswear, Inc. was a contractor instead of a manufacturer. Is that correct?

"Answer: Yes.

"Question: In connection with its contracting activities, did Daisart Sportswear, Inc. at any time receive any fabrics or materials from the manufacturer? 2054

"Answer: At all times.

"Question: By manufacturer, I mean the company you were working for as a contractor at all times purchased the materials?

"Answer: We simply supplied labor, trimmings, etc.

"Question: And what was the custom engaged in by these manufacturers in buying materials for Daisart Sportswear, Inc., did they supply a sufficient amount for a particular commodity that you were contracting for them? 2055

"Answer: At all times. Materials only.

"Question: Did you ever receive an excess of materials? The excess was returned to the manufacturer as you call him?

"Answer: Correct.

Reading of Excerpts from Exhibit 147-A

2056 "Question: With respect to the sale of materials and fabrics by Daisart Sportswear, Inc., those were not materials that were supplied to you by the manufacturer?

"Answer: At times they were.

"Question: It is customary for a manufacturer to supply sufficient materials in keeping with his marker, if you were able to save that it was an unwritten understanding that that material was yours to do with as you pleased?

"Answer: That would be so with wearing apparel.

2057 "Question: And with respect to ammunition bags?

"Answer: Since the ammunition bags were never in a set or standard size, the waste in most instances almost equalled the amount actually used.

"Question: Were you supplied with markers for these ammunition bags?

"Answer: We were not.

"Question: And did the manufacturer or person having the contract with the U. S. Government know that the fall away or waste that you saved in the cutting represented almost as much as the actual

2058 material used in cutting?

"Answer: They did.

"Question: Did the manufacturer having the contract with the U. S. Government make any claim on Daisart Sportswear, Inc. with respect to this fall away?

"Answer: On any number of occasions when materials were short, we used it for that, but they, at all times, knew that it was their material.

Reading of Excerpts from Exhibit 147-A

"Question: What procedure was followed by Daisart, did the manufacturer bill Daisart Sportswear, Inc. for material? 2059.

"Answer: Never.

"Question: Did it consign it?

"Answer: Simply shipped it for the use.

"Question: And how did Daisart Sportswear, Inc. bill the manufacturer for the finished garments?

"Answer: For so many finished garments.

"Question: So that with respect to Daisart Sportswear, Inc., contracting activities on ammunition bag materials were shipped by the manufacturer without bill? 2060

"Answer: It was not. Metals Disintegrating Company being a silent concern and being unable to furnish this material, they asked me to purchase materials for them. They were aware that I cannot do that without proper priorities. Those priorities were forthcoming in a blanket sum. No stipulated amount and I was further told to maintain a constant stock for any orders they may call. I mean Daisart Sportswear, Inc., for any orders they may call for. Their orders came to me sometimes dated and never in any set size or specified form. They charged from day to day. I then went about purchasing material for their work. When and if I had a surplus, I would notify them and ask them if they had anything immediately on hand as I am overstocked, at which time they told me they had not and to dispose of it. 2061

"Question: I assume that anything you tell us, Mr. Smith, is subject to verification? You state that after a time Metals Disintegrating Company, al-

though it had a contract with the Government, was
2062 not in a position to furnish you with the materials necessary for Daisart to manufacture this item.?

"Answer: Right.

"Question: And that because of that situation, Daisart was required to obtain priorities so that Daisart could obtain the materials and that it did so?

"Answer: In a blanket amount.

"Question: And that pursuant to that priority, Daisart thereafter acquired materials, some of which were used in the manufacture of ammunition bags for Metals, and some of it was disposed of by Daisart, is that correct?

2063

"Answer: Yes.

"Question: And those disposals by Daisart formed a good part of the sales of fabrics made by Daisart?

"Answer: They did.

"Question: Now, is it not a fact that Daisart Sportswear, Inc., back in October, 1945, was visited by investigators of the Office of Price Administration?

"Answer: No. No investigators. To the best of my knowledge, never.

2064

"Question: What did Daisart Sportswear have at 99 Central Avenue?

"Answer: Plant consisting of two floors, shipping room, etc.

"Question: Did Daisart Sportswear, Inc. have any additional plants?

"Answer: Never had. Additional space from time to time.

Reading of Excerpts from Exhibit 147-A

"Question: Where?

"Answer: I forgot the name of the street, about four blocks from the plant. About four blocks on Sussex Avenue, used for storage of various items then engaged in by Daisart Sportswear, Inc. 2065

"Question: You state that Daisart Sportswear, Inc., records after the secession of business in October, 1945, was transmitted to 111—14th Avenue, Belmar, containing records?

"Answer: No bills or invoices.

"Question: And that the property was subsequently sold? And at that time the president of Daisart Sportswear, Inc. was in California? 2066

"Answer: Correct.

"Question: And pursuant to his instructions records were removed from 111—14th Avenue?

"Answer: Not the records, personal belongings were removed and were to have included these records and they were then taken to Robert Treat Hotel.

"Question: To whom did you give instructions for the moving of your personal belongings and including Daisart records?

"Answer: A previous employee. Russell Baker. He was authorized to contract from the Hertz Drive-Ur-Self of Plane Street, which he did and delivered it to me. 2067

"Question: He carried out your instructions?

"Answer: He did.

"Question: Is Russell Baker related to Jeffrey Baker?

"Answer: He is colored.

Reading of Excerpts from Exhibit 147-A

"Question: Do you know where Russell Baker is
2068 now?

"Answer: The last I heard of him he was confined in a hospital. That was about four weeks ago.

"Question: You stated that Daisart Sportswear, Inc., in addition to its plant at 99 Central Avenue, occupied the other space for storage purposes?

"Answer: I did.

"Question: Who was the lessor?

"Answer: I do not know. The lease was subsequently broken in two months. Place in bad condition.

2069 "Question: What happened to the lease for 99 Central Avenue?

"Answer: The entire plant was sold including the lease.

"Question: To whom?

"Answer: Sold to L & L Sportswear.

"Question: Do you have the original lease from the Realty Management?

"Answer: No, I do not.

"Question: Does Daisart Sportswear or any of its officers or stockholders?

2070 "Answer: None whatsoever.

"Question: Or any other persons who compr. Daisart Sportswear, Inc. presently employees of L & L?

"Answer: None. They never even operated since I sold the place.

"Question: Who consummated the transaction with Daisart and L & L?

"Answer: I did.

"Question: Where did L & L Sportswear come from?

"Answer: New York City.

"Question: With what group or individual of L & L Sportswear did you consummate that transaction?

"Answer: Joseph Greenberg or Greenbaum.

"Question: L & L Sportswear, is that a manufacturer?

"Answer: What kind I do not know.

"Question: What did they do in New York City?

"Answer: I do not know.

"Question: What their address was?

"Answer: I do not know. I did not know they were from New York, deal consummated through an agent."

I have read the entire statement with the exception of colloquy.

Mr. Cogan, please.

The Court: Mr. Cogan will simply testify to charts, will he?

Mr. Rudykoff: Yes, your Honor.

The Court: I think at this time, then, that I should make a ruling concerning the testimony of Nathan Katz, who testified this morning. He was the supervisor in the New York Post Office.

Mr. Rudykoff: Yes, your Honor.

The Court: He testified that within the last week and including this morning he went to certain addresses to try to locate some individuals. I feel that that evidence should be stricken out and the objec-

2074 tions to be testimony of Nathan Katz sustained and is stricken from the record.

The jury is instructed to disregard it as no evidence in the case. That is the evidence of the supervisor, Nathan Katz.

Now, with reference to Exhibit No. 84, that is a photostat of a report, and I think the man's name was—

Mr. Rudykoff: Berman.

The Court: Yes, Berman. It was received in evidence as Exhibit No. 84. It contained certain photo-

2075 static pages of a report, parts of which counsel for one of the defendants read and incorporated in his interrogation of that witness on cross examination.

There seems to be some doubt as to its admissibility. I am going to resolve that doubt in favor of the defendants, and Exhibit No. 84 is stricken from the record and it will not be considered by the jury in any way.

Such portions of it as were read this morning—I think two paragraphs were read—the jury will erase entirely from their minds and not consider Exhibit 84 in any way in determining the guilt or inno-

2076 cence of these defendants.

Mr. Hart: At this time, if the Court please, in view of your Honor's ruling, and in view of the fact that counsel has repeatedly requested your Honor to reserve decision on motions to strike out certain evidence that had been offered and certain exhibits that had been offered, and in view of the fact that the jury has had those exhibits before them, which counsel strenuously objected to upon the ground that

they were incompetent, and the Court now rules that they are incompetent, I move for a mistrial upon the ground that evidence has been submitted to the jury over the objection of counsel which has no bearing upon this case. 2077

The Court: Your motion is denied.

Mr. Rudykoff: I would like the record to indicate that Exhibit 84 was never before the jury.

Mr. Hart: Pardon me.

The Court: You read two paragraphs of it this morning.

Mr. Rudykoff: Aside from that. 2078

The Court: Then I stopped you.

Mr. Rudykoff: Yes.

The Court: And the jury are instructed to disregard it. The motion made by counsel is denied.

How long will Mr. Cogan take, about?

Mr. Rudykoff: I think at least an hour on direct.

Mr. Hart: How long?

Mr. Rudykoff: At least an hour on direct.

The Court: I will be here for another hour in the building but I do not want to impose on the jury. I think then we will take an adjournment at this time and we will excuse the jury until tomorrow morning 2079 at 10:15. We will try to complete the evidence in the morning and begin summations of counsel during the afternoon.

The jury then is excused until 10:15 tomorrow morning and the admonition I have given you still holds.

(The jury left the Court Room)

2080 The Court: Counsel, the Court will have to insist that requests to charge be submitted by ten o'clock tomorrow morning. It is now 5:15—

Mr. Hart: If the Court please, I want to state on the record that I cannot complete my requests to charge until the People have completed their case, and the People have not yet completed their case.

The Court: You mean the Government?

Mr. Hart: The Government, yes, pardon me. That is force of habit.

The Court: You have stated that on the record. 2081 I think that tomorrow morning at ten o'clock is giving you ample time in view of the fact that many of these requests could have been prepared by counsel as the trial progressed.

Mr. Hart: The record will show that we have constantly been in Court.

The Court: That is right.

Mr. Hart: Each and every day.

The Court: That is right.

Mr. Hart: Right down until today.

The Court: The record will show the time the Court began and the time it adjourned.

2082 Mr. Hart: And I do not know when the requests could have been prepared.

The Court: The rules provide that they must be submitted prior to summation.

Mr. Hart: May I ask your Honor, then, at the conclusion of the Government's presentation tomorrow that I be given a couple of hours' time to prepare my requests?

Colloquy

Mr. Siegel: If your Honor pleases, you probably won't charge the jury, will you, much before Wednesday morning? 2083

The Court: I do not think the way the case is at present that I will charge the jury before Friday.

Mr. Hart: If your Honor is going to charge—

The Court: The rules provide that I must rule on your requests before you begin your summations.

Mr. Siegel: I do not recall the rules to that effect, Judge. They must be submitted but not ruled on before.

The Court: Submitted and ruled on so that counsel may guide themselves in their summations as to what the Court will charge. 2084

Mr. Siegel: That is not my understanding. I think there is a certain amount of latitude or discretion on the part of the Court with respect to these requests to charge. I think it has got to be in before you charge the jury.

The Court: Prior to summation of counsel, as I recall it. I have a copy of the rules here.

(The Clerk hands copy of rules to Mr. Siegel.)

2085

Mr. Siegel: (Reading) "At the close of the evidence or at such earlier time during the trial as the Court directs, any party may file written requests that the Court instruct the jury on the law as set forth in the requests. At the same time, copies of such requests shall be furnished to adverse parties.

"The Court shall inform counsel of its proposed
2086 action upon the requests prior to their arguments to the jury, but the Court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury."

Mr. Hart: Does your Honor mean that we are
2087 going to sum up tomorrow afternoon?

The Court: I hope to.

Mr. Hart: And your Honor is not going to charge the jury until Friday?

The Court: Yes. You see, you have an intervening holiday, you have Thanksgiving on Thursday.

Mr. Hart: Judge, I respectfully object to that procedure: the summations delivered on Tuesday followed by a charge on Friday is virtually no summation at all.

The Court: I would not say that.

Mr. Hart: It certainly destroys the force and
2088 effect, whatever it may be, of summation of counsel with the lapse of time.

The Court: I cannot change the date that Thanksgiving falls on.

Mr. Hart: Your Honor can charge on Wednesday.

Mr. Siegel: Wednesday morning.

The Court: I will have my charge ready for Wednesday morning. If you gentlemen will have completed your summations tomorrow, I will be prepared.

to charge. I have most of my charge already pre- 2089
pared.

Mr. Siegel: I think we will complete our summations by tomorrow.

The Court: I do not believe that we should hurry counsel in their summations of this case.

Mr. Rudykoff: Not only that, I do not think it would be advisable to submit the case to the jury on the eve of a holiday, and if we get through late Wednesday—

The Court: On Wednesday the Court wants to attend a dinner. I think it is either at twelve or one 2090
o'clock. It is a meeting over in Brooklyn of the Federal Bar Association.

Mr. Hart: That is a luncheon, is it not?

The Court: It is a meeting. They are holding ceremonies over there in the Eastern District which I would like to attend.

Mr. Hart: Where does that leave us, if we sum up tomorrow?

The Court: The requests to charge must be submitted by ten o'clock tomorrow morning. Your summations will begin within a reasonable time after the close of evidence. 2091

Mr. Siegel: If we finish up tomorrow, then you will charge on Wednesday morning.

The Court: I will be prepared with my charge on Wednesday morning, if the schedule of summations works out in the same way.

Mr. Hart: Could we have an evening session tomorrow, Judge? I think in the interests of justice.

that the defendants' summations should not be
2092 three days in advance of the Judge's charge.

The Court: It will not be three days in advance. I have heard about sixty or seventy witnesses in this case, which is just my rough estimate, and we have one hundred and fifty exhibits, and some of these exhibits contain ten or twelve papers, so that they may run into 1,500 or 2,000 individual papers which have been marked in evidence. Summation of counsel cannot be hurried in a case of this type.

I will try to be as fair as is humanly possible
2093 in all my rulings concerning the summation and the time of the charge of the Court.

In the meantime, Mr. Hart, on your motion: you need not prepare your memorandum concerning that very important matter that you raised by tomorrow morning. The Court will give you ample time to prepare that because I would like that to be thoroughly briefed.

Mr. Siegel: You will hear us on the motions then, at the close of the case, the regular motions to dismiss?

The Court: Yes, but I mean on this particular
2094 motion concerning that claim of immunity.

Mr. Hart: Yes, your Honor.

(At 5:20 P. M. an adjournment was taken until November 25, 1947, at 10:15 o'clock A. M.)

New York, November 25, 1947
10:15 A. M. 2095

TRIAL RESUMED.

(Jury in box.)

Mr. Siegel: May I at this time, if your Honor pleases, on behalf of the defendant Deeb, call a character witness to the stand who has some other appointments and wants to get away?

The Court: Of course, the Government's case has not been completed. You may call this witness in 2096
order to accommodate him. Is there any objection by the Government?

Mr. Rudykoff: No objection by the Government.

The Court: Have you any objection, Mr. Hart?

Mr. Hart: No, I have no objection.

The Court: It is a character witness called on behalf of the defendant Deeb and it is properly part of the defendant's case.

Mr. Siegel: That is right.

The Court: We are doing this to accommodate the witness.

2097

REV. PETER H. HORTON-BILLARD, called as a witness on behalf of the defendant Deeb, being first duly sworn, testified as follows:

Direct Examination by Mr. Siegel:

Q. Father Billard, what church are you connected with?
A. Syrian Orthodox.

tion of the witness until the other exhibits are of-
2134 fered.

The Court: All right.

Q. Have you prepared a schedule, Agent Cogan, of cylindrical bags? A. I have.

Q. Will you produce it, please?

(Witness hands paper to Mr. Rudykoff.)

Mr. Rudykoff: Will you mark it.

2135 (Paper marked Government's Exhibit 152, for identification.)

Q. What exhibit does 152 for identification reflect? A. Exhibit 2 in evidence, and also a part of Exhibit 1; that is to say, a part of one purchase order in Exhibit 1.

Q. To the extreme left-hand side appears a column headed, "Date of Order." From what source was that obtained? A. From the duplicate copies of the purchase orders, the originals of which were sent by Metals Disintegrating to Daisart.

Q. Before we proceed any further: this schedule re-
2136 flects the documents in Exhibit 2? A. That is correct.

Q. Does that mean the entire exhibit? A. The entire Exhibit 2, that is right.

Q. And you have also indicated another document which is part of 1, is that correct? A. That is correct.

Q. Will you please point to that document?

(Witness indicates paper.)

RECORD

P.700-765

Mr. Rudykoff: May we have this document marked 1-A, please. 2137

(Document marked Government's Exhibit 1-A, in evidence.)

Q. Returning to 152 for identification, the column immediately to the right of the one headed, "Date of Order" is one entitled, "Order Number." What is the source of the information contained in that column? A. The order numbers appear on the duplicate copies of the orders, the originals of which were sent by Metals Disintegrating to Daisart. 2138

Q. And in what exhibit do you find those? A. Those are contained in Exhibit 2 and the one order described before.

Q. Which is Exhibit 1-A, is that right? A. That is correct.

Q. The next column is headed, "Date of Daisart Invoice." What is the source of the information contained in that column? A. The date was obtained from the invoices submitted by Daisart to Metals Disintegrating.

Q. And the invoices which are part of what exhibit? A. The invoices are part of Exhibit 2—pardon me, correction on that—part of Exhibit 1-A. 2139

Q. With relation to the next column, which is headed, "Daisart Invoice Numbers," what is the basis for the information contained in that column? A. The invoice number appears on the face of the Daisart invoice to Metals Disintegrating.

Q. In what exhibit? A. In Exhibit 1-A.

Q. The following column is headed, "Number of Bags Sold." Where was this information obtained? A. The

Q. In what capacity? A. I am Chancellor of the Archdiocese and Secretary to the Archbishop.

2098

Q. How long have you been associated with that church? A. Eleven years.

Q. And with this particular parish how long? A. Eleven years.

Q. Now, during your time and association in the parish have you become acquainted with the defendant, Albert J. Deeb, or his family? A. Yes.

Q. Have you known his family? A. Very well.

Q. Mr. and Mrs. Deeb? A. Yes.

Q. You know the defendant, Mr. Albert J. Deeb? A. Yes.

2099

Q. And have you known the defendant and his wife and children? A. Yes. I did not know his wife because she passed away before I came there. The daughters I know, but I don't know their first names.

Q. You know that Mr. Deeb is now a widower? A. Yes, he has been for about eleven years, I think.

Q. Have you spoken to people in the parish or in the community about Mr. Deeb? A. I haven't spoken about him. I have heard of him among the people. I mean, in the ordinary conversation.

2100

Q. And in these conversations, these talks that were had, have you ever heard anything spoken against Mr. Deeb? A. Never.

Q. What would you say on the basis of your association with the defendant and your knowledge of his friends and his standing in the community, what his reputation would be? A. The best.

Mr. Siegel: That is all.

Mr. Rudykoff: No questions.

The Court: All right, Father, thank you very much. 2101

(Witness excused.)

The Court: Now, we will proceed with the Government's case.

Mr. Rudykoff: At the Court's direction I have caused a copy of Exhibit 147-A to be made with deletions of colloquy. I have also caused to be made carbon copies for the use of the defendants' counsel.

I would like at this time to offer in evidence as 147-B that typewritten transcript which omits the colloquy, if that is agreeable to the Court. 2102

The Court: I think we should receive it as 147-A rather than 147-B, because we did not intend to admit anything under 147-A except the questions and answers.

Mr. Rudykoff: Very well.

Mr. Hart: May I have the same objection to this exhibit as I interposed to 147-A?

The Court: Yes. This is 147-A now in its form as it was accepted by the Court.

Mr. Rudykoff: Except for the omission of the colloquy. 2103

The Court: Well, the colloquy is included in 147 for identification?

Mr. Rudykoff: That is right.

The Court: I have admitted a portion of that exhibit, which is this Exhibit 147-A now.

Mr. Rudykoff: I want to make that perfectly clear: 147-A itself contains the colloquy.

The Court: That was a portion of 147?

2104 Mr. Rudykoff: No, that was part of 147-A.

The Court: Are you referring to the paper that you offered in evidence yesterday?

Mr. Rudykoff: Yes, your Honor.

The Court: You call that 147-A?

Mr. Rudykoff: That is correct.

The Court: That was a part of 147 for identification?

Mr. Rudykoff: Yes, your Honor.

The Court: Now, yesterday I ruled that colloquy was not admissible and that you were to

2105 take from 147 for identification such portions of it as consisted only of questions and answers of certain pages.

Mr. Rudykoff: That is correct, your Honor.

The Court: And you have done that?

Mr. Rudykoff: That I have done.

The Court: And this now we will treat as 147-A in evidence?

Mr. Rudykoff: Yes, sir.

The Court: Being part of 147 for identification.

Mr. Rudykoff: Very well, sir.

Mr. Hart: I understand that your Honor in-

2106 structed Mr. Rudykoff, and he agreed to give me a photostatic copy of 147 for identification.

The Court: To give you a typewritten copy. If you want a photostatic copy later on, we will see that that is provided.

Mr. Rudykoff: May I say this: that it was impossible to prepare photostatic copies of 147-A for identification in the form that it was admitted into evidence because there are deletions.

The Court: Counsel does not want it for that purpose. He wants the entire thing for the purpose 2107
of submitting a memorandum to the Court.

Mr. Rudykoff: I would be delighted to do that.

The Court: That is your purpose, is it, Mr. Hart?

Mr. Hart: Yes, your Honor.

The Court: That will be supplied.

Mr. Hart: And also, for the purpose of emphasizing my objection on the record, that if an exhibit is offered in evidence over my objection, that the entire exhibit, even including the colloquy, should be received.

Mr. Rudykoff: Well, if your Honor wants to 2108
hear argument on that objection, the Government's position is simply this: that we are only offering the statement by way of a declaration and colloquies are not declarations.

Mr. Hart: If the Court please—

Mr. Rudykoff: And they only serve to advance certain legal arguments which, of course, is not within the province of the jury.

The Court: If you want to offer any part of the deposition, Mr. Hart, in evidence which Mr. Rudykoff has not, you may do so.

Mr. Hart: If the Court please, before I answer 2109
that question I want to say this: this is offered apparently for the purpose of showing alleged admissions by the defendant.

The Court: Yes.

Mr. Hart: I believe that your Honor will have to charge the jury with respect to admissions and the rules of law applicable, whether they are voluntary or involuntary.

The Court: Yes.

2110 Mr. Hart: If only part of this exhibit is offered in evidence, the voluntary or involuntary nature of it may not be disclosed. If the colloquy reveals that it was an involuntary statement, I think that is a very important element.

The Court: Well, we will receive it in its present form and if you desire to offer any part of it in evidence that has not been offered in evidence by the Government, you may do so.

Mr. Rudykoff: And if the defendant desires to offer it at this time, I have no objection.

2111 Mr. Hart: May I have the original?

Mr. Rudykoff: Yes, surely (handing).

The Court: I have not examined carefully the colloquy and I do not know just what bearing it will have on the case. I have excluded it on the objections of the defendants' counsel.

Mr. Hart: Now, I do not want to read it until I show to the Court what part of it I want to read.

The Court: All right.

(Conference at the Bench between the Court and counsel not within the hearing of the jury and not

2112 within the hearing of the Reporter, after which the following took place:)

The Court: Counsel have examined page 6 of Government's Exhibit 147 for identification, and Mr. Hart, the attorney for the defendants Daisart Sportswear and Smith, states that he wishes the Court to receive in evidence a portion of the col-

loquy on page 6 of Exhibit No. 147 for identification. 2113

The Court will receive that portion of the colloquy in evidence and will permit Mr. Hart to read it.

That will have to be typewritten, too, and made part of Exhibit 147-A.

Mr. Rudykoff: Very well, sir.

The Court: You may read it.

Mr. Hart: I am now reading from page 6 of Exhibit 147.

The Court: For identification.

Mr. Hart: For identification. 2114

The Court: This page you are now reading is to be considered as part of Exhibit 147-A in evidence.

Mr. Hart: That is correct.

The Court: You may read it.

Mr. Hart: It reads as follows:

"At this point, a discussion took place between Mr. Hood and Mr. Turtz, the precise wording of which I was unable to transcribe by reason of the rapid exchange of statements. However, the tenor of the discussion was as follows: 2115

"Mr. Hood objected to the production of Mr. George Smith for the purpose of giving testimony by reason of the fact that Mr. Smith (as well as the others) had been served with a District Director's subpoena rather than an Administrator subpoena. Mr. Hood stated that he doubted the validity of the District Director subpoena and that consequently it might be construed that Mr. Smith was voluntarily present at the hearing and consequently

could not claim privilege with the resulting im-
2116 munity.

"Mr. Turtz, however, took the position that appearance by Mr. Smith pursuant to the District Director subpoena would be construed as an involuntary and compulsory appearance so that Mr. Smith's right to claim privilege and immunity would for that reason would not be abridged.

"Mr. Hood asked Mr. Turtz if he were authorized to make that representation on behalf of the Office of Price Administration and Mr. Turtz stated that in connection with the particular hearing, it
2117 was his position that Mr. Smith was in attendance under compulsion of a valid subpoena and that by reason thereof such privilege and immunity as was properly claimed by Mr. Smith would inure to him."

The Court: The jury will understand, of course, that this Exhibit 147-A is in no way to be considered in determining the guilt or innocence of the other defendant Deeb.

Mr. Rudykoff: May I proceed, your Honor?

The Court: Yes.

2118 Mr. Rudykoff: Mr. Cogan.

The Court: I assume that at some time you will give me a copy of that statement, Mr. Rudykoff?

Mr. Rudykoff: Yes, I have a copy now which has been offered in evidence and I will supply an additional one.

The Court: Any time.

Mr. Hart: Have you a full copy now?

Mr. Rudykoff: Not a full copy.

Mr. Hart: That is what I think your Honor wants, a full copy. 2119

The Court: Yes, the same as you give Mr. Hart.

Mr. Rudykoff: Very well.

JOSEPH P. COGAN, called as a witness on behalf of the the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Rudykoff:

Q. Mr. Cogan, what is your occupation? A. I am a special agent of the Federal Bureau of Investigation. 2120

Q. How long have you been so engaged? A. Since October of 1941.

Q. What has been your professional training? A. As an accountant.

Q. Have you received any degrees? A. I received a Bachelor of Commercial Science Degree in 1940.

Q. And with regard to your association with the Federal Bureau of Investigation, has it been of a specialized nature? A. Yes, I have been assigned to accounting work, that is to say, about 50% of my work has been accounting work since I have been working for the FBI. 2121

Q. And is that accounting work done in connection with various investigations conducted by the Federal Bureau of Investigation? A. That is right.

Q. At my request have you made an investigation of the exhibits in evidence in this case? A. I have.

Q. And on the basis of those exhibits have you prepared certain schedules? A. Yes, sir.

Q. With respect to exhibits relating to Metals Dis-

integrating Company, will you tell us first how many
2122 schedules you have prepared? A. In that connection I prepared a summary schedule and three supporting schedules.

The Court: Where did you get the material for these schedules?

The Witness: The material for these schedules was obtained from Exhibits 1, 2, 3 and 4 in evidence, and from certain testimony given by a Mr. Noel, of Metals Disintegrating.

2123 Q. Agent Cogan, will you please turn to the schedule which relates to the rectangular bags?

Mr. Hart: To the what?

Mr. Rudykoff: To the rectangular bags.

(Witness indicates paper.)

Mr. Rudykoff: May we have that, please?

(Witness hands paper to Mr. Rudykoff.)

Mr. Rudykoff: Will you please mark it.

2124

(Marked Government's Exhibit 151, for identification.)

Q. With regard to 151 for identification, what exhibits are reflected? A. I would like to take a look at the exhibits, sir.

(Exhibits are handed to the witness.)

A. (Examining) The exhibits contained in Exhibit No. 3 in evidence. 2125

Q. To the extreme left-hand side appears a column which contains a heading "Date of Order." Do those dates relate to the orders which are part of Exhibit 3 in evidence? A. Yes, sir.

Q. Are the dates specified the exact dates indicated in those orders? A. That is correct.

Q. The column alongside of that to the right is headed, "Order Number." Where do those order numbers come from? A. They come from the duplicate copy of the purchase order in Exhibit 3.

Q. To the right of that is a column headed, "Date of Daisart Invoice." From what source was that information taken? A. Those dates appear on the face of the Daisart invoice to Metals Disintegrating which appears in Exhibit 3. 2126

Q. To the right of that column is headed, "Daisart Invoice Numbers." From what source did you obtain that information? A. These invoice numbers also appear on the face of the invoice of Daisart to Metals Disintegrating.

Q. And to the right of the last described column is a column headed, "Number of Bags Sold." From what source was that information obtained? A. These figures appear on the face of the Daisart invoices. 2127

Mr. Hart: Wait a minute. May we have that? Daisart invoices where?

The Witness: To Metals Disintegrating.

Mr. Hart: I mean, what exhibit?

Q. What exhibit is it? A. In Exhibit 3.

2128 Q. To the right of the last described column is a column headed, "Dimensions of Bags." From what source was that information obtained? A. These figures also appear on the face of the invoices from Daisart to Metals Disintegrating which are contained in Exhibit 3.

Q. To the right of that column is a column headed, "Number of Square Inches." Does that column contain a computation made by you? A. That is correct.

Q. And what is the basis of each figure contained in that column? A. The first basis is the dimensions which appear on the face of the invoice. The second basis is the

2129 number of bags which appear on the face of the invoice; and the third is the testimony of Mr. Noel of the Metals Disintegrating to the effect that these bags consisted of two pieces of the dimensions described in the invoice.

Q. The last column on the extreme right is headed, "Price per Invoice." With regard to the information contained in that column, what is the source thereof? A. This information appears on the face of the Daisart invoices to Metals Disintegrating which are contained in Exhibit No. 3.

Q. Does this schedule, which is 151 for identification,

2130 reflect all of the documents which are contained in Exhibit 3? A. Yes.

Q. Have you also computed the total number of bags, yes or no? A. Yes.

Q. And does that appear on Schedule 1, which is 151 for identification? A. The total number of bags for Exhibit 3, yes, sir.

Q. And have you computed the total number of square inches of the bags described in Exhibit 3? A. I have. 2131

Q. And have you set that down on 151 for identification? A. I have.

Q. And have you computed the total price indicated by the invoices contained in Exhibit 3 paid by Metals to Daisart? A. I have.

Q. And does that appear on 151 for identification? A. It does.

Q. Have you converted the square inches into square feet? A. Yes, sir.

Q. And have you stated the figure on 151 for identification? A. I have. 2132

Q. And have you converted the square feet into square yards? A. Yes, sir.

Q. And does that appear on 151 for identification? A. It does.

Mr. Rudykoff: I offer 151 for identification.

Mr. Hart: May I have a preliminary examination, if your Honor please?

The Court: Yes. Mr. Hart and Mr. Siegel, have you gentlemen your requests to charge prepared so that I may look at them in the meanwhile? 2133

Mr. Hart: Subject to typographical errors, we will have it up in a moment.

Mr. Siegel: There may be some typographical errors (handing).

The Court: All right.

Mr. Hart: I suggested to Mr. Rudykoff and it is agreeable that I withhold a preliminary examina-

2176 Q. Do you know his wife and his children? A. Quite well. His wife and his children I know well.

Q. During the time that you have known him, have you come in contact with other people who know him? A. Any number of people.

Q. And have there been occasions during the time that you have known him to discuss with the other people generally the defendant's general reputation? A. The opinion of those who have talked about George, particularly new friends to me, is that he is a very likeable, honest gentleman, a man of integrity, I would say.

2177 Q. Pardon me, a man of integrity? A. As we find him socially.

Q. What in your opinion is his general reputation for honesty and integrity? A. Oh, perfect.

Q. Have you ever heard anyone say anything against him? A. Other than nice words, nothing against him.

Mr. Hart: That is all, thank you.

Mr. Rudykoff: No questions.

The Court: All right.

2178 (Witness excused.)

ALTER KRIEGEL, called as a witness on behalf of the defendants Daisart Sportswear, Inc. and George Smith, being first duly sworn, testified as follows:

Direct Examination by Mr. Hart:

Q. Dr. Kriegel, what is your profession? A. I am a rabbi of the Jewish Community Center of Verona.

Q. And Verona is in New Jersey? A. That is a borough in the State of New Jersey. 2179

Q. Do you know the defendant George Smith? A. I have known Mr. Smith for about ten years.

Q. Do you know his wife and his children? A. I know his wife and I had the privilege of marrying his son, officiating at the marriage of his son and the marriage of his daughter.

Q. Recently? A. Within the past year and a half.

Q. Do you know other people who know the defendant George Smith? A. We are a small community of about 110 families—that is, a Jewish community—and we are all familiar with one another. 2180

Q. Have you in the course of your duties as rabbi or in the course of your conversations socially with the people in that community who are neighbors of yours and neighbors of the defendant Smith, discussed generally his reputation for honesty, integrity, morality and decency? A. Mr. Smith enjoys a very fine reputation, not only with our Jewish community, but with the general community. He is in the forefront of every civic enterprise. He helps whenever called upon and many times when not called upon.

Q. Do you engage in charitable work? A. Charitable endeavors. 2181

Q. Have you ever heard anyone say anything against the defendant Smith? A. I have not heard anyone say anything against the defendant.

Q. What in your opinion is his general reputation for honesty, decency, morality and integrity? A. He enjoys a very fine reputation for all you have mentioned.

2140 number of bags sold in this particular instance appears on the duplicate copy of the order, the original of which was sent by Metals Disintegrating to Daisart.

Q. And that is part of what exhibit? A. Of Exhibit 2.

Q. The following column headed, "Dimensions of Bags," contains information from what source? A. The dimensions of the bags appear on the face of the purchase orders described before.

Q. In what exhibit? A. In Exhibit 2 and also Exhibit 1-A.

Q. The next column is headed, "Number of Square
2141 Inches." Will you please state the basis of the computations appearing in that particular column? A. The dimensions—the figures which appear in that column were based upon a formula. The formula was as follows: Diameter times pi, or translated into figures, 3.1416 times the length of the bag.

In certain instances according to the purchase order, the bags had hems, and the hems of the bags were given certain dimensions, such as two or three inches. In those cases the length of the bag was computed—rather than the length, the width of the hem was added to the length of the bag to determine the over-all length of the material.

2142 Q. With regard to the last column headed, "Price Per Invoice," what was the basis for the information set forth therein? A. The information set forth therein was contained on the face of the duplicate purchase orders.

Q. Have you computed the total number of bags which are described in the exhibits upon which 152 for identification rests? A. Yes, I have.

Q. And is that set forth in this exhibit? A. It is.

Q. And have you also computed the total number of

Mr. Hart: That is all, thank you.

2182 Mr. Rudykoff: No questions.

(Witness excused.)

JOSEPH P. COGAN, resumed the stand:

Direct Examination by Mr. Rudykoff (Continued):

Q. Agent Cogan, I direct your attention to 156 for identification. Will you please tell us what that represents?

2183 A. This represents a schedule of yards of material ordered by Daisart and the yards actually received by Daisart.

Mr. Hart: I object to the latter part of that, yards actually received.

The Court: Strike that out.

Mr. Rudykoff: I will consent to that.

Q. What is the source of the information contained in this exhibit? A. This schedule is based upon the purchase orders submitted by Daisart to the various suppliers of Daisart and to the invoices submitted by the suppliers to

2184 Daisart for merchandise sold to Daisart.

Q. The extreme right-hand column is headed, "Exhibit Number." To what does that have reference to? A. That has reference to the orders and to the invoices in evidence.

Q. The exhibit numbers are those appearing on the documents in evidence, is that correct? A. That is correct.

Q. The next column is headed, "Count Number." Does that have relation to the counts of the information? A. That is correct.

square inches of the bags described in 152 for identification? A. I have. 2143

Q. And is that set forth on the exhibit? A. It is.

Q. And have you computed the total invoice price in relation to the bags described in 152 for identification? A. I have.

Q. And you set that down? A. Yes, sir.

Q. Have you converted the number of square inches computed by you in relation to the bags into square feet? A. I have.

Q. And have you set that down on 152 for identification? A. Yes, sir. 2144

Q. And have you in turn converted the square feet into square yards? A. Yes, sir.

Q. And did you set that down on 152 for identification? A. I did.

Q. The last column relating to price per invoice contains a reference to the second item. That reference relates to what exhibit? A. To Exhibit 1-A.

Mr. Rudykoff: I offer 152 for identification.

I will continue with the schedules so that the Court may hear counsel on all schedules relating to Metals Disintegrating. 2145

The Court: Yes, very well.

Q. Agent Cogan, have you also prepared a schedule with regard to bags, the dimensions of which were not given in the records in evidence? A. I did.

Q. And is this the schedule (handing)? A. (Examining) It is.

Q. The next heading is "Name of Supplier." From what source were the names obtained? A. From the names appearing on the purchase orders. 2135

Q. And are those names appearing in the exhibit described in the extreme left-hand column? A. That is correct.

Q. The next column is headed, "Preference Rating." What is the source of the information appearing in that column? A. This information also appears upon the face of the purchase orders.

Q. The next column is headed, "End Use." From what source was that information? A. From the face of the purchase orders. 2186

Q. The following column is headed, "Yards Ordered by Daisart." What is the source of information contained in that column? A. This information appeared on the face of the various purchase orders.

Q. The following column is headed, "Yards Invoiced to Daisart." What is the source of the information in that column? A. This information appears on various invoices submitted by the supplier to Daisart for payment.

Q. The last column is headed, "Date of Order," and contains dates appearing where? A. On the purchase order itself. 2187

Q. Are those exhibits in evidence? A. Yes, sir.

Q. Have you made a computation of the total yards ordered as appearing on the exhibits which are referred to in 156 for identification? A. I have.

Q. And have you set that down? A. Yes, sir.

Q. And does that appear on 156 for identification? A. It does.

Q. And have you made a total of the yards invoiced with
2188 respect to the exhibits described in 156 for identification?
A. I have.

Q. And have you set that down on 156 for identification?
A. Yes, sir.

Q. Will you please do this: will you substitute "invoiced" for "actually" and delete "received."

Mr. Hart: Substitute what?

Mr. Rudykoff: "Invoiced" for "actually" and delete "received."

2189 (Witness complies.)

Mr. Rudykoff: I offer 156 for identification.

(Exhibit handed to Mr. Hart.)

Mr. Hart: Am I holding you up, Mr. Rudykoff?

Mr. Rudykoff: That is all right; you go right ahead.

Mr. Hart: Are you finished?

Mr. Rudykoff: I have to start on another schedule.

Mr. Hart: You can start on another schedule.
2190 I think I can follow.

Mr. Rudykoff: All right, if it is agreeable to you.

Q. Do you have a schedule which relates to the powder bags? A. I do.

Q. May I have it?

(Witness hands paper to Mr. Rudykoff.)

Mr. Rudykoff: Will you mark it.

2146

(Marked Government's Exhibit 153, for identification.)

Q. What is the source of the information upon which 153 for identification is predicated? A. The purchase orders, the duplicate copies of the purchase orders from Metals Disintegrating to Daisart, and the invoices submitted by Daisart to Metals Disintegrating which are contained in Exhibit 1 in evidence.

Q. Does 153 for identification relate to documents which
2147 are part of Exhibit 1? A. That is correct.

Q. The first column to the extreme right is headed, "Date of Order," and it is based on information contained in what exhibit? A. Contained in Exhibit 1.

Q. Does the information contained in that column merely set down exactly the information contained in those exhibits? A. That is correct.

Q. The second column headed, "Order Number," is that a copy of the information contained in Exhibit 1? A. That is correct.

Q. And the next column, "Date of Daisart Invoice,"
2148 does that reflect the dates appearing in Exhibit 1? A. That is correct.

Q. And the following column headed, "Daisart Invoice Number," does that appear from the exhibits under Government's Exhibit 1? A. Yes, sir.

Q. The information with regard to the column headed, "Number of Bags Sold," what is the source of information with regard thereto? A. That information is contained

Mr. Rudykoff: Will you mark it, please?

2191

(Paper marked Government's Exhibit 157, for identification.)

Q. Will you describe the general nature of 157 for identification, please? A. This schedule is a schedule of yards of material designated for powder bags according to the orders which were ordered by Daisart from the various suppliers and the yards of material invoiced to Daisart.

Q. The extreme left-hand column of 157 for identification has reference to what? A. That has reference to the various exhibits in evidence which form the basis of this computation. 2192

Q. And the second column headed, "Count" has reference to what? A. The counts in the informations to which the information applied.

Q. The column of "Name of Supplier" is information obtained from what? A. From the face of the purchase orders.

Q. And the date of order is obtained from what source? A. From the purchase order.

Q. In evidence? A. In evidence.

Q. And described by exhibit number? A. That is correct. 2193

Q. Which is set forth on 157 for identification? A. That is correct.

Q. With regard to the column headed, "Preference rating," what is the source of the information under that column? A. This information also appears on the face of the purchase orders in evidence.

Q. With regard to the column headed, "End Use," what

in the invoices in Exhibit 1 from Daisart to Metals Disintegrating. 2149

Q. And does that information contained in that particular column represent a transfer of the figures contained in those exhibits to this particular schedule? A. That is correct.

Q. The next column headed, "Dimensions of Largest Bags Used," what is the source of information set forth in that column? A. A statement made here by a Mr. Noel of the Metals Disintegrating Company to the effect that the largest bags received by Metals Disintegrating were of dimensions four feet by five feet. 2150

Q. The following column headed, "Number of Square Feet," does that represent the computation made by you? A. That is correct.

Q. What is the basis of that computation? A. I used the formula, length times width times 2, in view of the fact that there were sides to the bags, ~~to the largest~~ bags as described by Mr. Noel.

Q. The last column, "Price Per Invoice," does that set forth the information which appears in Exhibit 1? A. That is correct.

Q. Have you made a computation of the total number of bags described in 153 for identification? A. I have. 2151

Q. And have you set that down? A. I have.

Q. And have you made a total computation of the square feet involved in that particular exhibit? A. I have.

Q. And have you set that down? A. Yes, sir.

Q. And have you made a computation of the total invoice price with relation to the bags described in said exhibit? A. Yes, sir.

Q. And have you set that down? A. I have.

is the source of the information therein contained? A.
2194 This also appears on the face of the purchase order.

Q. With regard to the column of "Yards Ordered by Daisart," where was that information obtained? A. That information was obtained from the face of the purchase orders.

Q. And the last column regarding yards invoiced to Daisart was obtained from what source? A. From the invoices in evidence which were sent by the various suppliers to Daisart for payment.

Q. Agent Cogan, will you please delete "actually" appearing at the head of the schedule, substitute "invoiced,"
2195 and delete "received" and substitute for "by" "to."

(Witness complies.)

Q. Have you made a computation of the total yards ordered by Daisart? A. I have.

Q. And have you set that down on 157 for identification? A. Yes, sir.

Q. Have you also made a computation of the yards invoiced to Daisart? A. I have.

Q. And have you also set that down on 157 for identifica-
2196 tion? A. Yes, sir.

Mr. Rudykoff: I offer 157 for identification.

(Exhibit handed to Mr. Hart.)

Mr. Rudykoff: I offer 156 for identification.

Mr. Siegel: Objected to as to the defendant Deeb, not binding upon him.

Q. And have you converted the square feet into square
2152 yards? A. I have.

Q. And does that appear on the exhibit? A. It does.

Mr. Rudykoff: I offer Exhibit 153 for identification.

Q. Agent Cogan, do Exhibits 151, 152 and 153 reflect all of the documents in evidence relating to Metals Disintegrating Company? A. No, sir.

Q. Do they reflect Exhibit 4? A. No.

Q. What is Exhibit 4? A. Exhibit 4 consists of two
2153 duplicate purchase orders from the Metals Disintegrating to Daisart, together with one invoice, Invoice No. 141, from Daisart to Metals Disintegrating, together with a duplicate copy of a voucher and a bill of lading.

Q. What is the material described in Exhibit 4? A. The material described is a quantity of yards of 2.00 drill.

Q. Have you prepared a summary schedule? A. Yes.

Mr. Rudykoff: Will you mark this?

(Marked Government's Exhibit 154, for identification.)

Q. Is the material referred to in Exhibit 4 in evidence
2154 set forth on 154 for identification? A. It is.

Q. Are there any other exhibits relating to Metals Disintegrating to which you have not made reference as yet? A. No, sir.

Q. Does 154 for identification contain a computation of total square yards in the rectangular bags which are described in 151 for identification? A. It does.

Q. Does it also contain a total of the square yards involved in 152 for identification? A. That is correct.

The Court: Objection overruled.

Mr. Hart: Objected to by the other defendants. 2197

The Court: Overruled.

(Marked Government's Exhibit 156 in evidence.)

Mr. Rudykoff: May I read from 156, if the Court please?

The Court: Yes.

Mr. Rudykoff: This is a schedule which is entitled "Schedule of Yards of Material Ordered by Daisart and Square Yards Invoiced to Daisart." The total yards ordered—4,157,275. Total yards invoiced—3,086,500¼ yards. 2198

Q. Agent Cogan, does this schedule relate to all of the orders in evidence placed by Daisart? A. That is correct, except with one small exception.

Q. What is that? A. The yardage for Mead Tex is confined to the invoices in Exhibits 20 to 21 inclusive, and do not include all of the invoices in Exhibits 34 and 35.

Q. Confining yourself to the orders and omitting reference to invoices, does 156 contain a reference to all of the orders in evidence placed by Daisart? A. Yes, sir.

Q. And does 156 include orders as to which the end use indicated was powder bags as well as other end uses? 2199
A. That is correct.

Q. In every case was the order placed a rated order? A. Yes, sir.

Q. And the rating is indicated on the exhibit, is that correct? A. That is correct.

Q. Have you prepared a schedule which confines itself to the orders placed for powder bags? A. I have.

Q. Does it also contain a total of the square yards involved in 153 for identification? A. It does. 2155

Q. And have you made a sum total of those three yardages and included the yardage described in Exhibit 4? A. I have.

Q. And have you set down the total square yards so computed on Exhibit 154 for identification? A. I have.

Q. Have you also computed and set down on 154 for identification the total number of bags purchased by Metals from Daisart, as represented by Exhibits 1, 2, 3 and 4? A. I have.

Q. And have you set that down on 154 for identification? 2156
A. Yes, sir.

Q. And have you also made a computation of the bags so purchased prior to December 17, 1944? A. I have.

Q. And have you set that down? A. I have.

Q. And have you made a computation of the bags sold subsequent to December 17, 1944? A. Yes, sir.

Q. And have you set that down on 154 for identification? A. Yes, sir.

Q. And have you made a computation of the total sums paid by Metals Disintegrating to Daisart as reflected in Exhibits 1 to 4, inclusive? A. Yes, sir.

Q. And have you set that down? A. I have. 2157

Q. And that appears on 154 for identification, is that correct? A. That is correct.

Q. Do Exhibits 151 to 154 for identification reflect all of the bags appearing in Exhibits 1 to 4 in evidence? A. That is correct.

Q. In some cases did you find that the invoices described materials supplied or furnished by Metals Disintegrating Company? A. Yes, sir.

2158 Q. Now, with regard to those invoices, how did you treat them with respect to who furnished the materials? A. I treated them as though Daisart had furnished the material.

Mr. Rudykoff: I will make my offer now with regard to 151 to 154 for identification.

Mr. Hart: May I have a preliminary examination of this witness in order to determine—

The Court: Whether or not you should object?

Mr. Hart: Yes.

2159 The Court: Well, I see no objection to it. You mean as to his competency to make these schedules?

Mr. Hart: As to the source of the figures on them.

The Court: It is a matter for the jury to determine whether he has taken into consideration all of the sources.

Mr. Hart: Then I object to the introduction of these exhibits.

The Court: The objection is overruled.

Mr. Hart: Exception.

Mr. Siegel: I object to the introduction of these exhibits into evidence on behalf of the defendant

2160 Deeb on the ground that they are not in any way binding on the defendant Deeb and in no way relate to the defendant Deeb.

The Court: Your objection is overruled.

(Same marked Government's Exhibits 151 to 154, in evidence.)

By Mr. Hart:

Q. Mr. Cogan, is there—

Mr. Rudykoff: I want to make it plain that I have not completed the direct examination of Agent Cogan. 2161

Mr. Hart: Oh, he sat down.

The Court: I think you should complete the examination before Mr. Hart cross examines.

Mr. Rudykoff: Pardon me?

The Court: I have received these exhibits in evidence.

Mr. Hart: Very well.

The Court: I think we both misunderstood you, both the Court and Mr. Hart.

Mr. Rudykoff: I was under the impression that there was some question as to the competency. 2162

The Court: I think you better complete them and then counsel can cross examine.

Mr. Rudykoff: May I at this time read from 154 in evidence?

The Court: Yes.

Mr. Rudykoff: This is entitled, "Schedule of Square Yards of Material Sold by Daisart Sportswear, Inc. to Metals Disintegrating Company in the Form of Bags or Otherwise."

Total square yards in rectangular bags 12,745. 2163

Total square yards in cylindrical bags 179.

Maximum possible square yards in bags whose dimensions are not given in records 32,254.

Total square yards of material not in the form of bags 3,742.

Total square yards 48,920.

Total number of bags purchased by Metals Disintegrating Company from Daisart before Decem-

ber 17, 1944, 11,795; after December 17, 1944, 192—
2164 total 11,987.

Total price paid by Metals to Daisart $7,959.71.

Q. At my request, Agent Cogan, have you prepared a schedule of charges by suppliers? A. I have.

Mr. Rudykoff: Will you mark it, please.

(Marked Government's Exhibit 155, for identification.)

2165 Q. With regard to 155 for identification, what is the basis for the information therein set forth? A. The information contained in this schedule was taken from the ledger sheets in evidence in every instance, with the exception of one company, and in the case of that company a tabulation was made of the invoices, the duplicate invoices in evidence.

Q. The extreme left-hand column is headed, "Exhibit Numbers." That has reference to what? A. To the exhibits in evidence as previously described.

Q. And the following column is headed, "Name of Supplier." From what source did you get that information?
2166 A. From the name of the supplier appearing on the ledger sheets in evidence.

Q. And the extreme right-hand column entitled "Amount" represents the total of what in each case? A. The total of all the debits on each ledger sheet in evidence.

Q. And have you computed the aggregate total of those debits as well as the debits appearing on the invoices in evidence with respect to the supplier whose ledger account is not in evidence? A. I have.

Q. And have you set down that total on 155 for identification? A. I have. 2167

Mr. Rudykoff: I offer 155 for identification.

Mr. Hart: The last figures in the last column, is that dollars or yardage?

Mr. Rudykoff: Dollars.

Mr. Hart: Objected to.

Mr. Siegel: Same objection for the defendant Deeb.

The Court: The objections are overruled.

(Marked Government's Exhibit 155, in evidence.) 2168

Mr. Rudykoff: May I read from 155, if the Court please?

The Court: Yes.

Mr. Rudykoff: Schedule of total charges to the account of Daisart with various suppliers. The exhibit numbers appear in the first column. I shall not read those.

Name of Supplier	Amount
Fine Goods Sales Associates	$271,004.78
Marvlo Fabrics	$135,846.84
Regal Equipment	$7,488.12
Southeastern	$28,286.88
Eisenberg	$37,508.70
Mead Tex	$269,520.10
Steinam Co., Inc.	$210,684.33
Lazarus	$50,095.46
Berger & Sherin	$184,259.72
Total	$1,194,694.93

2169

2170 Q. Agent Cogan, do you have a schedule of yards ordered and yards received? A. Yes, sir.

Q. May we have it?

(Witness hands paper to Mr. Rudykoff.)

Mr. Rudykoff: Will you mark it, please?

(Marked Government's Exhibit 156, for identification.)

2171 The Court: We will declare a recess at this time for ten minutes.

(Short recess.)

After recess.

(Jury in box.)

2172 Mr. Hart: Judge, could I ask if we could divert from the regular order? I have two character witnesses here. One of them is a rabbi and the other is a gentleman who has been in official life in New Jersey, and both of them would like to get back.

The Court: I think we can interrupt this witness for a few minutes.

Mr. Rudykoff: Surely.

The Court: The continuity won't be disturbed too much.

Mr. Rudykoff: I do not think so.

William H. Kelly—for Defendants—Direct.

WILLIAM H. KELLY, called as a witness on behalf of the defendants Daisart Sportswear, Inc. and George Smith, being first duly sworn, testified as follows: 2173

Direct Examination by Mr. Hart:

Q. Colonel, you know the defendant George Smith? A. I do, sir.

Q. How long have you known him? A. Approximately four years.

Q. Colonel, what has been your occupation through the past years? A. Myself?

Q. Yes, yours? A. I have been in the real estate business for twenty-five or thirty years. I have been the Banking Commissioner of the State of New Jersey for a term and a half. 2174

Q. Is that the State Banking Commissioner? A. Yes, I have been the Commissioner for a term and a half. I have been the Internal Revenue Collector for a full term.

Q. That is, the United States Government? A. Yes, the United States Government.

Q. What are your present business affiliations? Are you connected with any corporations at the present time? A. Only myself personally as a realtor.

2175

Q. Pardon me? A. Myself personally as a realtor.

Q. Are you a director in the Hollander—what is that name? A. Hollander Fur Dyeing Corporation.

Q. You say you have known the defendant Smith how long? A. Approximately four years.

Q. And do you know him professionally or socially? A. Socially only.

price per yard per supplier's invoice, and the figures ap-
2218 pearing in Column 13 and/or 14 of the exhibit.

Q. Column 25, which is entitled "Amount of Supplier's Price," is the result of what computation? A. This represents the difference between Column 23 and Column 24. Column 23 is the total price to the buyer and Column 24 is the total price from the supplier.

Q. Do each of the sheets which are part of 158 for identification, with the exception of the sheet entitled "Summary," contain information of the same character which you have described with relation to the first sheet which
2219 concerns itself with Count 1? A. Yes, sir.

Q. Have you also prepared a summary of the information contained in the sheets to which you have made reference to heretofore? A. I have.

Q. And in what manner is the particular sheet identified in this summary? A. This sheet is identified by five columns. The first is Count 1—

Q. Just pause there for a moment. Does the Count number coincide with the Count numbers on each of the sheets which you have described heretofore? A. Yes, sir.

Q. And with regard to those sheets, have you set up the total number of yards on this summary? A. I have.

2220 Q. And with regard to each of those sheets have you set up the total price? A. Yes, sir.

Q. To the buyer represented by the particular sheet? A. Yes, sir.

Q. Have you also set up the total price from the supplier's? A. Yes, sir.

Q. Have you set up also the amount of over the supplier's price as indicate in each sheet? A. I have.

Q. Have you made a calculation of the totals in each case? A. Yes, sir. 2221

Q. With regard to the total which you arrived at and represents the total of the column headed, "Price from Supplier," have you made an additional computation? A. Yes, sir.

Q. Does that computation represent the division of the amount, the total amount of price from supplier by the figure .88? A. Yes, sir.

Q. Have you set down the result of your calculation? A. I have.

Mr. Rudykoff: I offer 158 for identification. 2222

Mr. Hart: I object to this exhibit, if the Court please. This is full of conclusions of this particular witness, and inferences based upon the evidence. What is being done here is virtually to attempt to substitute this witness's judgment or inferences for that of the triers of the facts in this case.

The Court: I am going to ask the witness a question before I rule on the objection.

By the Court:

Q. I understand that you have examined the exhibits offered in evidence? A. Yes, your Honor. 2223

Q. And from the facts that appear or the figures that appear on those exhibits you have prepared these schedules? A. That is right.

Q. And you have taken the facts or the figures from the exhibits in evidence and accurately used them or put them on this sheet or schedule to arrive at these figures? A. That is correct.

Q. You have not substituted any extraneous matter or
2224 figures of your own except those that appear on the exhibits in evidence? A. That is correct.

The Court: The objection is overruled.

Mr. Hart: Will you ask this further question: He has placed figures taken from one exhibit in juxtaposition with the figures on another exhibit for the purpose of having the inference drawn that there is some relationship between them.

The Court: The jury is to decide whether or not the relationship of one exhibit to another was prop-
2225 erly done on this exhibit.

Mr. Hart: And they are not to be bound by the inferences drawn.

The Court: The jury have that as an ultimate fact, as one of the ultimate facts to determine themselves.

Mr. Siegel: I object to this exhibit being introduced into evidence on behalf of the defendant Deeb upon the ground that no foundation has been properly laid for its introduction into evidence; upon the further ground that the exhibits are the best evidence
2226 and they speak for themselves; upon the further ground that this paper purports to be an interpretation by the witness of what he adduces the facts to be, which is not evidence in the case.

The Court: No, the jury—

Mr. Siegel: If I may conclude, if your Honor pleases?

The Court: Yes.

Mr. Siegel: The traceability of the goods plays

a very important part here. The mere fact that he puts down coincidentally, as he says, a certain number 2227
of yards or cost is no proof of the identity of the goods. Consequently, I feel that that may be misleading as purely an interpretation as he desires to see it for his own benefit.

The Court: Well, the jury—

Mr. Siegel: I mean, for the benefit of the Government, in putting that forth in the exhibit, and therefore I respectfully except to its introduction in evidence.

The Court: The jury are instructed that none of the figures appearing on any of these schedules 2228
are in any way binding upon them and that they have to determine from an examination of the exhibits whether or not these figures are correct. If they so find, they may take that as a fact or in considering the guilt or innocence of any of these defendants.

The objections are overruled and the exhibit is received in evidence.

(Same marked Government's Exhibit 158 in evidence.)

Mr. Rudykoff: May I read from 158, if your 2229
Honor please?

The Court: Yes.

Mr. Rudykoff: "Summary of Information Contained in Attached Schedules." I will read at this time only the totals.

Total number of yards, 784,049 7/8.

Total price to buyer, $477,480.86.

Total price from supplier, $230,329.04.

Amount over the supplier's price, $227,151.82.

2230 A calculation has been made of $230,329.04, which is the total price from suppliers, divided by .88, and the result is $261,737.55.

Q. Agent Cogan, have you determined the excess of $477,480.86, which is the total price to buyer, as it appears on this summary, over the sum of $261,737.55? A. No, sir, I haven't.

Q. Would you make that calculation on the summary?

(Witness complies.)

2231 Q. Have you made that calculation? A. I have.

Q. What is the net result? A. $215,743.31.

Q. And have you set that down on the summary? A. I have.

Mr. Rudykoff: You may inquire.

Mr. Hart: May we recess now, Judge?

The Court: I think that is a fair request. In view of these large numbers of exhibits and their complicated nature, I am going to give you a little longer recess because I feel that you should have a little extra time to go over these exhibits. It might curtail some of your cross examination or limit it in some respect. If we take an adjournment until two o'clock that will give you an hour and twenty minutes.

2232

Mr. Hart: That will be plenty of time.

The Court: We will adjourn then until two o'clock, and the admonition that the Court has heretofore given you still holds.

(Adjourned to 2:00 P. M.)

AFTER RECESS—2:00 P. M.

2233

(Jury in box.)

Mr. Rudykoff: Pursuant to the request made this morning, if the Court please, I have caused page 6, at least so much of that as was read by Mr. Hart, to be typewritten. I am referring now to Exhibit 147.

The Court: We will consider that part of 147-A in evidence.

That is the only part you wanted included, isn't that right, Mr. Hart? This does not concern you, Mr. Siegel. This exhibit was not received as to your 2234
client.

Mr. Hart: I assume there is no necessity of offering it. It will be considered without objection part of Exhibit 147-A.

Mr. Rudykoff: That is agreeable.

The Court: Subject to the objection that you made yesterday concerning the whole matter on which the Court has reserved decision.

Mr. Hart: Yes. If it is to be considered part of it, I think it ought to be attached to it.

The Court: It will be a part of it. 2235

Mr. Rudykoff: The statement itself is being photostated.

The Court: Yes. All right, Mr. Cogan, will you take the stand, now?

JOSEPH P. COGAN, resumed the stand:

2236

Cross Examination by Mr. Hart:

Q. Mr. Cogan, I believe the first exhibit prepared by you was 151, is that it? A. I would have to see it.

Q. Yes. I do not mean the first one prepared; I mean the first one offered in evidence (handing). A. (Examining) That is correct.

Q. And I believe in answer to questions propounded to you, you stated that the source of the information contained therein was various exhibits and the testimony of

2237 Mr. Noel, is that correct? A. That is correct.

Q. Did you hear the testimony of Mr. Forrest? A. I was here in the court room at the time, yes.

Q. Did you take into consideration the testimony of Mr. Forrest in any manner, shape or form in preparing these exhibits? A. No, sir.

Q. You know who Mr. Forrest is, do you not? A. Yes.

Q. Who is he? A. He is, if I recall correctly—he was the representative of the Metals Disintegrating Company in charge of their records.

Q. Who was the purchasing agent? A. He was the pur-

2238 chasing agent, I meant to say.

Q. He was not in charge of their records, was he? A. That is correct. He was purchasing agent.

Q. Did you pay strict attention to his testimony? A. No, sir, I didn't.

Q. Do you recall him being asked questions concerning the manner and method of placing orders with Daisart? A. I remember several things that he said about the placing of orders with Daisart.

Q. Do you recall him stating that on occasions that they would get rush orders from the Navy Department and that in those cases he would telephone orders to Daisart? A. Yes, sir. I remember that distinctly. 2239

Q. And they do not appear among the written orders which are in evidence in this case; do you recall that? A. Yes, sir.

Q. What allowance did you make for the telephone orders, if any? A. If there were no records at all to substantiate the telephone orders I did not take any record of those at all.

Q. In other words, all you took were the written orders that are in evidence, is that correct? A. No. In certain instances there were invoices in evidence and no orders substantiating those invoices. 2240

Q. I see, and then you took invoices? A. I took the invoices in those instances.

Q. And then all you knew about this is that you had before you certain exhibits which were introduced in evidence showing the written orders and certain invoices for which there were and for some of which there were not written orders, and you totaled up the yardage on the orders and on the invoices, for which there were no orders, is that correct? A. That is correct. 2241

Q. And if there were oral orders for which there were no invoices produced, then your figures would have to be corrected to meet that requirement? A. That is true.

The Court: Did you check up the orders and invoices against the ledger accounts?

The Witness: Those records were not available to me, your Honor.

Q. Well, I understood you to say that you are connected
2242 with the Federal Bureau of Investigation, commonly described as the FBI, is that right? A. That's right.

Q. You do field work, do you not? A. That's right, sir.

Q. The records of Metals Disintegrating are available, are they not? A. I believe so.

Q. Did you go to Metals Disintegrating to see what their records show? A. No, I did not.

Mr. Rudykoff: That is objected to as immaterial. The schedule is based upon evidence in the case and nothing else.

2243 The Court: I do not recall whether there was a ledger account of Metals Disintegrating offered in evidence.

Mr. Rudykoff: There wasn't any, your Honor.

Mr. Hart: There wasn't any.

Q. Did you hear the testimony of Mr. Forrest that he did not know whether these were all the bags that were delivered; did you hear that testimony? A. Yes, I heard his testimony.

Q. Did you hear the testimony of Mr. Forrest that they
2244 had another purchasing agent at Verona as distinguished from Elizabeth? A. That is correct.

Q. Did you hear Mr. Forrest's testimony that they also had a plant in St. Louis where bags were manufactured or where bags were shipped from Daisart? A. Yes, sir.

Q. Did you hear him state that he could not tell how many bags were shipped to St. Louis or how many were shipped to Verona? A. I remember him saying that, yes, sir.

Q. Will you produce it?

2200

(Witness hands paper to Mr. Rudykoff.)

Mr. Rudykoff: I offer 157 for identification.

Mr. Hart: Objected to on the same grounds as previously objected to.

Mr. Siegel: Objected to by the defendant Deeb on the ground it is not binding upon him.

The Court: The objections are overruled.

(Marked Government's Exhibit 157, in evidence.)

2201

Q. Does 157 confine itself to those orders as to which the end use stated was powder bags? A. That is correct.

Mr. Rudykoff: May I read from 157, if the Court please?

The Court: Yes.

Mr. Rudykoff: Schedules of yards of material for powder bags ordered by Daisart and square yards invoiced to Daisart: Total yards ordered—3,732,000. Yards invoiced to Daisart—2,642,697½.

2202

Q. Do you have a schedule which relates to sales? A. I do.

Q. That consists of how many sheets, excluding the summary? A. Fifteen sheets.

Q. And in addition do you have a summary sheet? A. Yes, sir.

Mr. Rudykoff: Will you mark this, please?

(Marked Government's Exhibit 158, for identification.)

Q. Agent Cogan, does each sheet of 158 for identification relate to a separate count? A. Yes, sir. 2203

Q. And is the count with respect to which it relates set forth in the upper left-hand corner of each sheet? A. That is correct.

Q. The Column No. 1 headed, "Exhibit Number" relates to what? A. It relates to the exhibit number of the supplier's invoice in evidence.

Q. Column No. 2 sets forth what information? A. Column No. 2 sets forth the description of the goods which description is contained in the copy of the supplier's invoice.

Q. Is that the exhibit which is described in the extreme left-hand column, Column 1? A. Yes, sir. 2204

Q. Column No. 3, Invoice Number, relates to what? A. This relates to the invoice number appearing on the face of the duplicate sales invoice of the supplier.

Q. And Column No. 4 headed, "Date" sets forth the date in what? A. The date appearing on the duplicate sales invoice.

Q. Which is the exhibit referred to in Column 1? A. That is correct.

Q. And Column 5 headed, "Yards" sets forth the yards appearing where? A. Appearing on the face of the supplier's invoice. 2205

Q. Appearing in Column 1? A. That is correct.

Q. And Column 6, "Amounts," refers to what amount? A. The amount of the invoice, of the supplier's invoice, referred to in the exhibit number in Column 1.

Q. Do Columns 1 to 6 inclusive set forth information which is contained in the exhibit described in Column 1? A. Yes, sir.

Q. Do you recall—I don't know whether it was Mr. Forrest who testified or Mr. Noel, is it? A. Mr. Noel. 2245

Q. That there were occasions when trains were held up which were leaving for St. Louis because bags were not yet ready for delivery; do you recall that? A. I recall that, yes.

Q. How long have you been with the Federal Bureau of Investigation? A. Since October of 1941.

Q. Have you on occasions visited plants of various people and looked at records and made charts from those records? A. Yes, I have.

Q. But you didn't in this case, did you? A. No, sir. 2246

Q. As far as you know, nobody, either you or anybody from your department, went to St. Louis to check up the number of bags delivered by Daisart? A. That is correct.

Q. Nor to Verona? A. That's right.

Q. Nor to Elizabeth? A. Correct.

Q. You are not familiar with the manufacture of bags, are you? A. No, I know nothing about the manufacture of bags.

Q. And I believe you made computations based upon dimensions which were mentioned by either Mr. Noel or Mr. Forrest, that the bags were five feet by four feet, is that right? A. In certain instances where the dimensions 2247 were not given on the exhibit itself.

Q. Yes. And I believe you said that in order to determine the number of square yards in the bag you multiplied 5 by 4 and then multiplied that by 2 because there were two sides to the bag, is that right?

The Court: He reduced it to square yards.

Mr. Hart: Yes.

Q. Is that correct? A. Yes, that is correct.

2248 Q. Did you know in each of these instances what width material those bags were made from? A. No, I did not.

Q. Did you notice the width of the material on some of the orders? A. I noticed the width of the material on all of the orders.

Q. The width of the material varies from 36 inches to in some cases 72 inches, does it not? A. I think there is one instance where it was 72 inches.

Q. Do you know how many yards are consumed if you take 36-inch material and make a bag four feet wide by ten feet long? A. How many yards of material are consumed?

2249 Q. Yes. A. In the making of the bag?

Q. If the material is only 36 inches wide and the bags are four feet wide. A. I couldn't figure that out offhand.

Q. You do not know how that is done, do you? A. No, I don't. I am not acquainted with the manufacturing.

Q. You would not know how many yards of material were used to make the same bag if the material were 72 inches wide and the bags were only 48 inches or four feet wide, would you? A. I wouldn't know what material would be used to make those bags, no, sir.

Q. You would not know if the material was a lesser

2250 width how much material was actually used and how much material was wasted, would you? A. I wouldn't have any way of determining the waste.

Q. Or if the material were wider than the width of the bags, your answer would be the same, isn't that so? A. That is correct.

Q. All you did then with respect to 151 is to take the invoices and orders which were received and transpose those figures on 151 under columns which are headed, "Or-

Q. And does that exhibit in each case under Column 1
2206 represent an invoice of a supplier? A. Yes, sir.

Q. Have you indicated on the extreme right-hand side, the back of which you have folded over, the information relating to the supplier? A. Yes, sir.

Q. And what is the source of the information which is set forth there? A. The purchase order received by the supplier from Daisart.

Q. And is the information set forth obtained from a document in evidence? A. Yes, sir.

Q. And is that document described by the name of the supplier and the date of the purchase order? A. Yes, sir.
2207

Q. Reverting back to Column 7, that describes an exhibit number. What exhibit is set forth in that column in each case? A. That exhibit is the duplicate sales invoice received by the buyer of the material described in the exhibit under Column 1.

Q. First, is it an exhibit in evidence? A. Yes, sir.

Q. And is it referred to by the exhibit number? A. That is correct.

Q. And is it in each case an invoice rendered to a buyer? A. That is correct.

Q. Column 8, Name of Buyer, under that column is the
2208 name which appears in each case a name which was taken from the buyer's invoice described in Column 7? A. Yes.

Q. With respect to Column 9, Date of Invoice, is that the date of the exhibit described in Column 7? A. That is correct.

Q. With respect to Column 10, the seller named in the invoice, is that the name set forth in each case in the exhibit described in Column 7? A. Yes, sir.

Q. With regard to Column 8, which is entitled, "Yards

der," "Date of Invoice," "Number of Bags," et cetera, whatever is on that? A. That is correct. 2251

Q. You had no means of ascertaining at the time you drew up 151 what the actual facts were concerning the number of bags delivered other than was shown by these exhibits? A. That is correct.

Q. Not having made a personal investigation, nor your department not having made a personal investigation of the records of Metals Disintegrating, is that correct? A. Yes, sir.

Q. Then after you had prepared this schedule, 151, you totaled the square inches, then reduced it to square feet, and then reduced it to square yards, and the figure 2252 represents the square yards of material which were actually put into the bags, not including waste, but actually put into the bags, and only the bags represented by the invoices and orders which were produced in Court? A. That is right.

Q. And does not include any other deliveries which might have been made to any of the plants of Metals for which invoices have not been produced, is that correct? A. That is true.

Q. Your next exhibit was 152, and you did the same thing there with respect to the cylindrical bags, is that correct? 2253 A. That is right, sir.

Q. When we refer to 151, that was with respect to the rectangular bags? A. That's right.

Q. 152 deals with the cylindrical bags, is that correct? A. That's right.

Q. And again, without repeating questions, you made no investigation to find out how many cylindrical bags were actually delivered to each and all of the plants of Metals

Purchased," does that contain the yards appearing on the exhibit described in Column 7 in each case? A. That is 2209
a part of the total yardage appearing in each case.

Q. What part is set forth in Column 11? A. The part which could be identified with the material appearing described in the supplier's invoice.

Q. And with regard to identification, is the means of identification set forth in Columns 13 and 14? A. Yes, sir.

Q. With regard to Column 12, "Amount," what amount is set forth in each case? A. The amount set forth in each case is the total amount of the invoice.

Q. As appearing on the exhibit described in Column 7? 2210
A. That is correct.

Q. Coming to Column 13, is that one of the columns which sets forth a means of identification? A. Yes, sir.

Q. And what means of identification is reflected in Column 13? A. Where the yards of goods in Column 5—rather, where the total yards of goods described in Column 5 coincide with the total yards of goods described in Column 11, that information was incorporated in this Column 13.

Q. Column 5 relates to the supplier's invoice? A. Yes, sir.

Q. And Column 11 relates to the buyer's invoice, is that 2211
correct? A. Yes, sir.

Q. Does Column 14 indicate material identified in some other fashion? A. Yes, sir.

Q. And by what means? A. In this column is placed the yards of goods appearing in Columns 5 and 11 which coincide in case numbers and/or yards per case.

Q. Do Columns 7 to 14 inclusive relate to buyer's records? A. Yes, sir.

Mr. Hart: I object to "buyer's." Who do you
2212 mean?

Q. Well, will you answer that? A. By Buyers is meant in this schedule any purchaser of merchandise other than Daisart.

The Court: As appears from the exhibit?

The Witness: As appears from the exhibit.

Mr. Hart: From which exhibit?

The Witness: From the exhibits in evidence. In this particular instance, Exhibits 111 and 110.

2213 Q. Are they set forth in Column 7 in this case? A. Yes, sir.

Q. Column 15, entitled "Exhibit Number," relates to what? A. It relates to a cancelled check in the possession of the buyer.

Q. And in evidence? A. Yes, sir.

Q. And the exhibit number is or is not set forth in Column 15? A. The exhibit number is set forth in Column 15.

Q. And in each case relates to a check, is that right? A. That is correct.

2214 Q. Column 16, "Check Number," does that relate to the exhibit described in Column 15? A. Yes, sir.

Q. And Column 17, "Date," does that relate to the date of the exhibit described in Column 15? A. Yes, sir.

Q. And the "Amount" column, which is Column 18, relates to what? A. That relates to the amount of the check.

Q. Do Columns 15 to 18 inclusive set forth information appearing on the checks which are described in Column 15? A. Yes, sir.

Disintegrating but based your exhibits solely upon exhibits
2254 that had been produced in Court? A. That's right.

Q. And to the extent that it reflects the figures in the exhibits it is accurate, is that correct? A. Yes, sir.

Q. But to the extent that it would not represent wastage or other deliveries which are not evidenced by exhibits in Court, if any, it is not accurate? A. I don't quite understand your question.

Q. Let's put it this way: you did not put in there any figure representing the wastage in the event that the material was narrower than the bags, or wider than the bags, did you? A. That is true; I did not have any infor-
2255 mation available to me whereby I could determine waste.

Q. And, therefore, that is not reflected in either Exhibit 151 or 152? A. That is correct.

Q. Nor did you have any material available to you as to the number of bags which might have been delivered to St. Louis or Verona which are not reflected by the exhibits? A. That is correct.

Q. And to that extent, then, it does not include such deliveries? A. It does not include such deliveries, yes, sir.

Q. Now we come to Exhibit 153, and you prepared that exhibit, I take it, upon a hypothetical basis plus the testi-
2256 mony of either of the witnesses from Metals Disintegrating, and in asking that question I will remind you that Exhibit 153 is the schedule of what you call the maximum possible number of square yards whose dimensions are not given in records in evidence, is that correct? A. Yes, sir, that is correct.

Q. In other words, there were certain exhibits produced by them which did not show the yardage or the amount of material which went into each bag? A. That is corre-

Q. Column 19 which is headed "Endorsed by" relates to what? A. This relates to the exhibits, the buyer's checks 2215
which I mentioned before.

Q. Described in what column? A. Described in Column 15.

Q. And does Column 19 contain the endorsements appearing on that check? A. That is correct.

Q. And does Column 20 set forth the bank of deposit in each case? A. Yes, sir.

Q. With regard to Column 21, which is entitled "Price per Yard per Buyer's Invoice," what is the source of information? A. This information was obtained from the in-
voice of the buyer; that is to say, the original invoice given 2216
to the buyer by the individual or organization that sold the material to him.

Q. And described or set forth by exhibit number in what column? A. Column 7.

Q. Column 22, entitled "Price per Yard per Supplier's Invoice," sets forth the information obtained from what source? A. From the duplicate sales invoice in the supplier's records.

Q. And those records which are described in what column? A. In Column 1.

Q. Column 23, entitled "Total Price to Buyer," sets forth 2217
the total of what? A. This is a mathematical computation. It is a total of Column 21 times Column 13 or Column 14.

Q. And do those columns relate to the yards identified in each case as you have indicated heretofore? A. That is correct.

Q. Column 24, which is entitled "Total Price from Supplier" sets forth what? A. This represents a mathematical computation of the figure appearing in Column 22, the

Q. So you took those records or exhibits and then you remembered the testimony of one of the witnesses that he did not believe any of the bags were larger than four feet by five feet, and you took that figure and assumed that the bags were four feet by five feet, is that correct? A. No, not to that extent. His testimony was to the effect that the largest bag that he received, to the best of his recollection, was four by five feet; so none of those bags, where dimensions were not available, could be more than four by five feet. 2257

The Court: You took the largest dimensions?

The Witness: The largest dimensions possible. 2258

Q. You took four feet by five feet? A. That is correct.

Q. And you multiplied the number of bags in those exhibits by four feet by five feet, is that correct? A. That is correct.

Q. And you say that he testified, to the best of his recollection, that none of them were larger than four feet by five feet, and then these figures would be correct if his recollection was correct, is that so? A. That is correct.

Q. And they would also be correct if there were not other bags delivered to the various plants of Metals Disintegrating for which no invoices or orders have been produced? A. That is correct. 2259

Q. Then after having prepared Exhibit 153, then you prepared Exhibit 154, the heading of which, for your guidance, is: "Schedule of Square Yards of Material Sold by Daisart Sportswear, Inc. to Metals Disintegrating Company in the Form of Bags or Otherwise." A. That is correct.

Q. And you prepared this by the same means and with
2260 the same knowledge and with the same lack of knowledge that you had in preparing Exhibits 151, 152 and 153? A. That is correct.

Q. Of course, you have no independent knowledge as to how many bags were actually delivered by Daisart to Metals Disintegrating at any of its plants, have you? A. No, I have no independent knowledge at all. It is based upon entirely the exhibits in evidence.

Q. And if those exhibits are incomplete, then your exhibit does not truly represent the number of bags delivered? A. That is true.

2261 Q. Do you recall the testimony of one of the witnesses, probably Mr. Forrest—correct me if I am wrong—when I asked him whether or not Daisart ever delivered material to them which was not in completed form, and he said no, they never did; do you recall that testimony? A. I have a recollection of him saying that.

Q. Do you recall me afterwards picking up the invoices and showing him the invoices where yardage was sold as distinguished from bags and he said, "Oh, yes, I see they did"; do you recall that situation? A. Yes, I recall that.

2262 Q. Do you recall me asking further: Now, you didn't recall that; can you recall whether or not they delivered other material in bulk rather than in bag form?" And he said he couldn't say; do you recall that? A. Are you referring to Mr. Forrest?

Q. Mr. Forrest, yes. A. Yes, I recall his statement to that effect.

Q. Do you recall me asking him whether or not he had people manufacturing bags in Verona and he said he had

a woman manufacturing bags down there; do you recall that? A. Yes. 2263

Q. And do you recall me asking him whether or not they manufacture the bags in St. Louis and he said yes, they had someone manufacturing bags down there? A. Yes, sir.

Q. Do you recall me asking him whether or not he knew of his own knowledge whether Daisart had shipped the material down to Verona and to St. Louis for the manufacture of these bags, and he said he didn't know? A. Yes, I recall that.

Q. So what material was shipped down to Verona and 2264
to St. Louis, then these records are incomplete in so far as they do not take into consideration such material, is that correct—I am talking now of Exhibit 154—I withdraw that. I am talking now of the exhibit which you prepared which shows the material delivered by Daisart to Metals Disintegrating not in the form of bags. Do you understand my question? A. I don't understand your question.

Q. Well, you prepared an exhibit, which is 154, which purports to show a schedule of the square yards of material sold by Daisart to Metals in the form of bags or otherwise. A. Yes, sir. 2265

Q. That "or otherwise" means piece goods? A. That's right.

Q. Having in mind the testimony which I have just referred to, if piece goods was sold to St. Louis or sent to St. Louis and sent to Verona and sent to Elizabeth, which are not reflected in the exhibits in this case, then to that extent this exhibit is inaccurate, referring to Exhibit 154? A. That is correct.

2266 Q. And you do not know whether or not or how much piece goods were sent to either or any of these places, do you? A. I do not. I did not conduct an investigation in that regard.

The Court: You prepared these exhibits then entirely from an examination of the exhibits in evidence? I am talking about the schedules.

The Witness: That is correct, your Honor.

2267 Q. Is that correct? Didn't you testify on direct examination that in addition to the exhibits in this case you prepared them in reliance not only upon the exhibits but the testimony of Mr. Noel? A. Yes, I relied upon the testimony of Mr. Noel together with the exhibits.

Q. Why didn't you—or didn't you rely upon the testimony of Mr. Forrest, the purchasing agent?

Mr. Rudykoff: Why? I object to the form of the question.

Mr. Hart: I withdraw the "why."

2268 Q. Didn't you rely upon the testimony of Mr. Forrest, the purchasing agent? A. Yes, I did.

Q. What factor did you take into consideration concerning Mr. Forrest's testimony that he placed oral telephone orders—did you make any allowance for them? A. There was no possible way that I could make allowance for them.

Q. But you knew that he had testified that at times they were rushed and he telephoned over, "Get out these bags in a rush," without giving a written order, is that correct? A. That is correct.

Q. You made no allowance for that, and, of course, you couldn't make an exact allowance, could you? A. No, sir. 2269

Q. And, therefore, if oral orders were given for which there is no order in Court, or invoice in Court, you could not give an accurate picture of what was actually ordered or what was actually delivered, isn't that so, if that state of facts exists? A. If that state of facts exists, then the picture would not be accurate.

Q. You heard him say, didn't you, that he placed oral orders without giving a written order? A. Yes, I heard him say that.

Q. Now, on Exhibit 155 you have the heading, "Schedule of Total Charges to the Account of Daisart with Various Suppliers," and those figures were taken from where; from the exhibits? A. From the exhibits in evidence, yes, sir. 2270

Q. And I suppose the figure in "Amount" refers to the cash or the amount paid, money amount, not amount of yardage? A. No, those refer to the charges—the total of the charges on the debit side of the ledger.

Q. Maybe I am phrasing it clumsily. The figure under "Amount" means dollars and not yards, is that correct? A. That is correct.

Q. I would like you to look at Exhibit 156, which is headed, "Schedule of Yards of Material Ordered by Daisart and Square Yards Invoiced to Daisart." Are the figures under the column "Yards Invoiced to Daisart" the number of yards delivered as against the order which is placed under the column headed "Yards Ordered by Daisart"? A. No, the column "Yards Invoiced to Daisart" represents a tabulation of the yards that were charged to Daisart; that is to say, Daisart was billed by the various 2271

suppliers for yards totaling the amount which appears in
2272 the column headed "Yards Invoiced to Daisart."

Q. Will you look at this item which is alongside of Exhibit 67, and tell the jury how many yards less were delivered to Daisart than were ordered. Do you want a piece of paper? A. The difference is 397,969 yards.

Q. Will you look at this exhibit and see whether or not that was ever delivered to Daisart?

The Court: Referring to which exhibit?

Mr. Hart: Referring to Exhibit No. 156.

2273 A. No, there is nothing in this exhibit which would indicate that the balance was shipped to Daisart.

Q. All right. In other words, Fine Goods shipped to Daisart approximately 400,000 yards less than were ordered by Daisart, or to be exact, 397,969 yards? A. That is correct.

Q. Did you conduct an investigation of Fine Goods' records to show what they had done with that yardage. A. No, I had not.

Q. Did you know that that yardage, if it were ordered by Daisart under priorities and was obtained from the
2274 mills under those priorities, should not have been used by Fine Goods?

Mr. Rudykoff: That is objected to.

The Court: The objection is sustained. Fine Goods is not on trial here.

Mr. Hart: If the Court please, I take exception to that. Their representative was here and testified to a certain state of facts.

Mr. Hart: And to the extent that he testified,

The Court: That is right. 2275

the credibility of Fine Goods and the witness is in issue here.

The Court: That is correct, but you interrogated that witness on cross examination and the Court will not receive any additional evidence. You are bound by the answers on cross examination.

Mr. Hart: Does your Honor agree that the credibility of the witness is in issue?

The Court: The credibility of every witness is always in issue. The credibility is for the jury to determine. 2276

Q. Were you here when the representative, Mr. McLaren, of Mead Tex, testified? A. Yes, I was here.

Q. Do you recall me questioning him concerning this order of 100,000 yards alleged to have been placed by Daisart with Mead Tex? A. Yes.

Q. Will you look at Exhibit 156 and tell us how many yards Mead Tex actually delivered out of that 100,000? A. 12,980.

Q. 12,980 yards, a shortage of approximately 87,000 yards out of 100,000, is that correct? A. That is correct. 2277

Q. I won't use the word "shortage." A difference? A. Yes.

Q. Will you look at this item under "Eisenberg" where it is alleged that 100,000 yards were ordered. Will you tell us how many yards were actually invoiced to the defendant out of that 100,000 which it is alleged they ordered? A. 10,551 6/8's.

Q. A shortage of approximately 89,500 yards? A. That
2278 is correct.

Q. Or nearly 90% of the amount ordered? A. Yes, sir.

The Court: Did you find invoices of Fine Goods for that difference?

Mr. Hart: He said, no, he can't find it.

The Court: Pardon me, I will ask the witness. Did you find invoices of Fine Goods for that?

The Witness: No, I did not.

The Court: Then all that Daisart was charged with was the quantity you have shown for a lesser
2279 amount?

The Witness: That's right.

Mr. Hart: That is not what Daisart was charged with, your Honor.

Q. I show you this item under the heading of Berger & Sherin where Daisart is purported to have ordered 450,000 yards. Will you tell us how much less than 450,000 yards were delivered approximately? A. Approximately 250,000 yards.

Q. Less? A. Less.

2280 Q. Were delivered? A. That's right.

Q. And above that, another item of Fine Goods Sales Associates, 200,000 yards are alleged to have been ordered. How many were actually delivered? A. 97,704 6/8's.

Q. A shortage of about 102,250 yards, is that correct? A. That's right.

The Court: A difference.

Mr. Hart: A difference, pardon me.

The Court: Those figures that counsel has been reading to you are reflected or recorded in that schedule that you prepared? Are they recorded in there. 2281

The Witness: Yes, they are.

Q. For Steinau & Company there appears an order of 50,000 yards. A. That's right.

Q. How many were actually delivered? A. 18,838.

Q. At the time you conducted this investigation or at the time you made these calculations did you have before you the informations in this case? A. Yes, I saw the informations. 2282

Q. Did you read the information? A. I have read it, yes.

Q. Did you report to your office or do anything to ascertain what became of the goods which were not delivered to Daisart? A. No, I did not.

Q. Exhibit No. 157 is a schedule of yards of material for powder bags ordered by Daisart and square yards invoiced to Daisart, is that correct? A. Yes, sir.

Q. How did you arrive at the square yards? A. From an examination of the invoices in evidence. 2283

Q. You have a heading here, "Schedule of Yards Ordered and Square Yards Invoiced." Is there a distinction between yards ordered and square yards invoiced? A. No, sir; that should be yards invoiced, instead of square yards.

Q. That is a mistake, is it? A. It is a mistake so far as square yards is concerned.

Q. In other words, you would like to change "Square Yards" to "Yards," is that right? A. That is correct.

2284 The Court: Is that on Exhibit 157?

Mr. Hart: Yes, on Exhibit 157.

Q. So that now the exhibit purports to show the schedule of yards of material for powder bags ordered by Daisart and yards invoiced to Daisart; is that right? A. That's right.

Q. Will you tell us the difference, or tell the jury, rather, pardon me, the difference between the number of yards ordered and the number of yards invoiced to Daisart? A. Approximately 1,100,000.

2285 Q. In other words, there was approximately 1,100,000 yards less delivered to Daisart or less invoiced to Daisart than were ordered? A. That is correct.

Q. Did you conduct any investigation to determine what became of that one million and some odd hundred thousand yards? A. No, sir; I did not.

Q. Did you conduct any investigation to determine whether or not the yards invoiced to Daisart were actually received by them? A. No, sir.

Q. Now, this Exhibit 158 is based upon Exhibits 151 to 157, is that correct? A. That's right, sir.

2286 Q. And the exhibits specified in the exhibit column on each of these pages? A. Yes, sir.

Q. I take it that what you did here is to take—you say, "Per Buyer's Records" on top—you did not have the buyer's records available to you, did you? When I say "records," their ledgers or their journals? A. No, I didn't have those records available. What is meant by that is buyer's records in evidence.

Q. You mean what is in evidence? A. That is correct.

Q. And what you did here was to pick out certain sales 2287
that were made other than the sales made by Steinam and the others listed on Exhibit 157, and tried to compare them with sales which were made by Steinam and those listed on these other exhibits to Daisart, is that correct? A. That is correct.

Q. And you tried to get the yardages and show there was a similarity in yardages or a similarity in case numbers or some of the bolt numbers, or something of that kind, is that correct? A. That is correct.

Q. You don't know of your own knowledge, do you, 2288
whether or not the merchandise in a given case sold to John Jones was the same merchandise purchased from Steinam, we will say? A. No, I wouldn't know that of my independent knowledge.

Q. You don't know, do you, whether or not the invoices sent by Steinam—I will withdraw that. You don't know whether or not the numbers appearing on the invoices brought here by Steinam and Mead Tex and the rest of them contained the numbers that were actually on the bolts and cases delivered to Daisart? A. No, I don't know that.

Q. In the case of Fine Goods, where there is a shortage, 2289
we will say, of 400,000 yards, you don't know whether or not the bolt numbers which appear on the merchandise bought by these outside buyers were part of the 400,000 which were withheld by Fine Goods or part of the merchandise delivered to Daisart, do you? A. No, I couldn't say that.

Q. In other words, this Exhibit 158 is based upon, in addition to the factors which I have mentioned, the ex-

2290 hibits in evidence, is based upon conjecture upon your part or inference upon your part that there might be a similarity and therefore— A. No, sir, I examined these, and if I may explain—

The Court: Surely, go ahead. Just what did you do?

A. (Continuing) I examined the invoices submitted by the suppliers; that is, the duplicate sales invoices of the suppliers, the originals of which were sent by the sup-
2291 pliers to Daisart Sportswear, Inc.

I also examined certain other invoices which were received by certain buyers who testified here, and I compared the invoices received by the buyers who testified here with the duplicate sales invoices representing the originals of which were sent by the suppliers to Daisart, and I noted whatever similarities appeared on those invoices, whatever coincidences appeared, I noted those on the work papers.

Q. The similarities that you refer to or the indicia or the evidence of similarity consisted in most cases of lot numbers or piece numbers, we will say, or bolt numbers,
2292 whatever they call them, and yardage, is that right? A. That is correct.

Q. So that if a given concern, we will say, Berger & Sherin, had an order from Daisart—we will take another one. If Mead Tex had an order from Daisart for 100,000 yards and they only delivered 12,900 of those 100,000 yards to Daisart, and then sent invoices with bolt numbers and case numbers which did not correspond to the actual

case numbers and bolt numbers forwarded to Daisart, your figures then would be inaccurate, would they not? A. That is correct. 2293

Q. And you have no way of knowing, do you, whether the numbers on these invoices are actually the invoices or actually the numbers on the goods received by Daisart or whether they are part of the goods which were withheld by these various concerns? A. All I know is that the numbers appear on the invoices in most instances.

Q. But there are over a million yards unaccounted for that were never delivered to Daisart? A. That is correct.

Q. And you don't know the numbers on those bolts or cases, do you? A. No, I do not. 2294

Mr. Hart: May I have your Honor's indulgence for just a moment?

The Court: Yes.

Q. Did you hear the testimony that there were other articles being manufactured by Smith, by Daisart? A. Yes, I recall testimony to that effect.

Q. And if any of this material were used in the manufacture of other articles which had the same or a higher priority rating, that would not be reflected in these exhibits, would it? A. That would not be reflected, no. 2295

Q. Did you hear the testimony of one of the witnesses—I will withdraw that. Did you take into consideration whether or not certain merchandise was shipped or alleged to have been shipped by Stefnam & Company to Daisart but then was rerouted to some fellow in Boston? A. No, sir, I did not.

2302 The Court: If you are only going to be gone ten minutes, and if it is necessary for you to go, I will declare a recess for ten minutes. That would be the better way.

Mr. Siegel: In the meantime I can get the exhibits together here, Judge.

The Court: I think that would be better. We will declare a ten minute recess.

Mr. Siegel: May I ask your Honor to direct the witness in the meantime not to confer with the United States Attorney.

2303 The Court: No, I do not think that is necessary.

Mr. Siegel: Judge, he is still a witness on the stand.

The Court: But such a request will reflect on Mr. Rudykoff, which I do not think is warranted by his conduct during the trial. The request is denied.

We will have a ten minute recess.

(Short recess.)

JOSEPH P. COGAN, resumed the stand:

2304

Cross Examination by Mr. Siegel:

Q. In many instances, Mr. Cogan, in preparing this report with respect to sales and purchases, the thing that guided you was the similarity in most instances of the same quantity or number of yards when you were allocating them; that is, the sales against the purchases? A. In most instances it was a matter of case numbers.

Q. And yardage? A. And total yardage.

Q. And in some cases these yardages were part of a greater sale? A. I don't quite understand what you mean. 2305

Q. In other words, where you had a number of sales pertaining to the same material, it was allocated to the one bulk sale that you had? A. That is correct.

Q. And you do know, don't you, Mr. Cogan, that these cases, generally speaking, contain approximately the same number of yards; that is, in the trade? A. No, I don't know that.

Q. Didn't you hear some testimony here that each bolt is between 65 and 75 yards, that it generally runs that way, and that there are so many bolts to the case? A. No, I don't recall hearing that testimony. 2306

Q. You don't recall hearing that testimony at all? A. Not in that regard.

Q. Do you recall one witness testifying that the bolt ran between 65 and 75 yards? A. I don't recall such testimony.

Q. You weren't here in Court at that time? A. I probably was not in Court at the time.

Q. If I told you that these cases of piece goods ran pretty much alike, would that in any way—I withdraw the question. If I told you that the yardage in these cases that piece goods are carried in are pretty much alike, that would enter into a consideration in determining any similarity that there may be? 2307

Mr. Rudykoff: There is no such evidence, if the Court please.

The Court: Mr. Siegel, if you make a proposition let it be based upon facts in evidence. I do not recall any such testimony.

2308 Mr. Siegel: I recall some testimony about how these bolts ran and how many bolts there were to the case.

The Court: Bolts of goods ran about the same yardage, that is correct. Suppose you frame your question that way.

There was testimony, as I recall it, that the bolts ran from 75 to 70 yards apiece.

Mr. Siegel: I recall about 65 to 75.

The Court: 65 to 70 or 75. It varied, but approximately in that amount.

2309 Q. So what you did, Mr. Cogan, in recapitulating this statement here, you looked at the exhibits and wherever you found the yards matched, you put them down here and allocated it to a particular source? A. No, not where the yards alone matched. In those cases the similarity was noted in the case numbers, the case numbers appearing on the invoice from the supplier to Daisart, and the other invoices of Fox or Howard or whoever it may be to the buyer.

Q. And in some instances there were no case numbers?

2310 A. That is correct.

Q. So in those instances you used the yardage where they were coincidentally the same and you applied it towards that source? A. Where the total yardage of the buyer's invoice equalled the total yardage of the supplier's invoice I noted that similarity.

Q. Wherever these—as you used your own phrase before—were coincidental? A. That is correct.

The Court: Mr. Siegel, I did not want you to get the impression that I ruled against you on the question of the yards in a bolt. 2311

Mr. Siegel: Oh, no. As a matter of fact, I will rest on Mr. Hart's examination of this witness anyway.

The Court: Are there any other questions?

Redirect Examination by Mr. Rudykoff:

Q. Agent Cogan, with regard to Exhibit 151, that relates to Metals Disintegrating for your information, there has been, or there have been a number of questions which refer to invoices and orders. With regard to invoices, what were the nature of the documents that you were referring to—we are now speaking of Metals Disintegrating transactions. A. By invoices I was referring to the invoices submitted by Daisart to Metals Disintegrating. 2312

Q. And when reference was had to orders, what documents did you have reference to? A. I had reference to the duplicate purchase order of Metals Disintegrating, the original of which was sent to Daisart.

Q. With regard to invoices and orders, were the number of bags described in the invoices more or less than the number of bags described in the orders? A. In most cases the number of yards described in the invoices were less than the number of yards described in the orders. 2313

Q. And were there cases, from your examination of these documents, where an invoice from Daisart was not supported by an order from Metals? A. Yes, there were several instances of that kind.

Q. And in those cases where there were invoices from

2314 Daisart and no orders from Metals, did you base your calculation on the invoices from Daisart? A. I did.

Q. With regard to these exhibits which set forth the yards invoiced, are they the yardages which were invoiced on the supplier's invoices to Daisart? A. That's correct.

Q. And are they invoices which, according to the ledger accounts, eventually were paid by Daisart? A. That is correct.

Q. You were asked about yardages of materials which might have been used for other rated purposes. With regard to ratings for powder bags, you made an examination of the orders, did you not? A. I did.

2315 Q. And where the order indicated an end use for powder bags, you so entered it on your schedules? A. I did.

Q. With regard to the material which is described in the various buyer's records which appear in 158, were they yardages which you identified in the various supplier's invoices? A. Yes, they were.

Q. And with regard to those yardages which appear from the buyer's records, were they or were they not used for powder bags? A. In some instances they were.

2316 Mr. Hart: I object, if the Court please. He does not know whether they were used for powder bags or not.

The Court: Your objection is sustained.

Q. I direct your attention to 158 and ask you to confine your attention to Columns 7 to 12. Is that information which is contained in the buyer's records? A. Yes, sir.

Q. And those records consist of invoices rendered to various buyers, is that correct? A. That is correct.

Q. Tell us whether the yardages described in those in- 2317
voices rendered to the buyers were ever used by Daisart?

Mr. Hart: I object, if the Court please.

The Court: How can he do that from an examination of the invoices?

Mr. Rudykoff: If the Court please, I do not want to discuss that—

The Court: Step up.

(Conference at the Bench between Court and counsel not within the hearing of the jury and not 2318
within the hearing of the Reporter, after which the following took place:)

Mr. Rudykoff: It is a matter of argument, I suppose.

Mr. Hart: Your Honor then sustains my objection?

The Court: Yes, your objection is sustained.

Q. You have been asked a number of questions with regard to yardages not received by Daisart, is that correct?
A. That is correct. 2319

Q. And these schedules were prepared largely for the purpose of showing, if they do show, what yardages in fact were received from Daisart, isn't that so?

Mr. Hart: I object, if the Court please. They were not; they showed the goods ordered, and I object to Mr. Rudykoff testifying.

The Court: Your objection is sustained.

2320 *By the Court:*

Q. Were these schedules prepared upon the orders and the invoices which have been received in evidence? A. That is correct, your Honor.

Q. The figures you got and put on those schedules are the figures shown on the orders and invoices in evidence? A. That is correct.

Mr. Hart: Orders and invoices?

The Court: Yes.

2321 *By Mr. Rudykoff:*

Q. And those are invoices in the case of suppliers which were rendered to Daisart? A. That is correct.

Q. What was your first connection with this case, Agent Cogan? A. I was requested by Mr. Rudykoff, of the United States Attorney's Office, to prepare certain schedules in connection with this case approximately two and a half weeks ago.

The Court: You did not have anything to do

2322 with the investigation?

The Witness: I had nothing whatsoever to do with the investigation.

The Court: You just assisted in the preparation for trial?

The Witness: That is true, your Honor.

Q. Had you known about this case prior to two and a half weeks ago? A. No, I knew nothing whatsoever about the case.

Mr. Rudykoff: That is all. 2323

Mr. Siegel: I ask your Honor's indulgence for a moment. These are quite voluminous things to work with.

The Court: Yes.

Recross Examination by Mr. Siegel:

Q. Mr. Cogan, in this schedule that you prepared here—

Mr. Hart: What exhibit? 2324

Q. Government's Exhibit 158—you have here invoices as to source of supply, 46443 and 46444, and I show you Exhibit 67, and please ask you to let me have 46443 and 46444?

The Court: That refers to bale number, does it?

Mr. Siegel: No, that refers to the invoice number, Judge.

The Court: All right.

A. Those invoices are not in here. 2325

The Court: You say they are not there?

Mr. Siegel: He says they are not in Exhibit 67.

Q. And this schedule here was prepared from invoices that you received from the District Attorney? A. That is correct.

Q. Is it possible that you prepared that from an invoice that was not in evidence? A. I prepared this schedule

2332 Q. Do you know what the rated use or what the preference rating for navy pea jackets is? A. No, I do not.

Q. Or navy leggings? A. No, sir.

Q. Or Lend-Lease clothing? A. No, sir.

Q. Or army tool kits? A. No, sir.

Q. Do you know whether the preference rating for army tool kits or any of those articles that I mentioned is higher or lower than the preference rating for powder bags? A. I do not.

The Court: Any other questions?

2333 Mr. Rudykoff: That is all, with permission of the Court to check it and recall the witness, if necessary, with regard to this so-called missing exhibit.

The Court: I do not think it is necessary to recall the witness. That may be pointed out later.

Mr. Rudykoff: Very well.

Mr. Hart: I raise no question about any missing exhibit, if all we have lost is two exhibits out of the mass that we have here.

The Court: I do not think they have been lost. They have not been fastened together, but they just have paper clips holding them together. It is quite

2334 possible that they are mixed up with the others.

Any other witness?

Mr. Rudykoff: The Government rests, if the Court pleases.

The Court: I will hear the defense.

Mr. Siegel: I think we ought to make our motions now without the jury being present.

The Court: Make the motions now and I will hear argument in the absence of the jury.

Mr. Siegel: Yes.

The Court: Step up here for a moment. 2335

(Conference at the Bench between the Court and counsel not within the hearing of the jury and not within of the Reporter, after which the following took place:)

The Court: We will adjourn today until ten o'clock tomorrow morning.

You ladies who are housewives need not be too much concerned about your marketing for Thanksgiving because tomorrow we will adjourn at twelve o'clock sharp so that you can do your shopping and prepare for the Thanksgiving holiday, which I hope you all enjoy. 2336

We will adjourn then until ten o'clock tomorrow morning. Try to be prompt and we will start right in, and we will adjourn promptly at twelve o'clock.

The usual admonition that I have always given you still obtains, that you will not discuss the case with anybody and keep your minds open.

(The jury left the court room.)

The Court: On the motions to be made by the defendants, we will take up the informations first, shall we? 2337

Mr. Siegel: That is right.

The Court: There are two informations. Which will you take up first?

Mr. Siegel: One information is on the extension or application of the preference, and the other one is on the unlawful use to which the material was put.

2296 Q. Don't you remember the fellow who at first didn't know—what was his name—Bert Julian; did you hear that name mentioned? A. I heard the name mentioned.

Q. Weren't you here when that witness testified? A. No, I was not here at that time. I was here during part of the testimony.

Q. And then if any of this stuff was rerouted, you have included it anyhow, if it was mentioned in the invoices and orders? A. That is correct.

Q. You have an exhibit here with—I believe it is part of Exhibit 138, this small sheet which I hold in my hand—
2297 at the left-hand corner of the top page headed, "Summary of Information Contained in Attached Schedule," where you have "Price to Buyer and Price from Supplier," you have the price to buyer whether the testimony is that it was sold by Howard or Fox or anybody else than these defendants, is that correct? A. That is correct.

Q. And the total amount under that column reflects merchandise sold by anybody and everybody, or covers practically every transaction testified to here, is that right? A. It doesn't cover every transaction testified to here.

Q. Well, it covers every transaction involving the counts
2298 specified alongside of the various amounts, is that right? A. That is correct.

Q. You don't know of your own knowledge whether Smith or Daisart sold any of this goods to anybody, do you? A. Not of my own knowledge, no.

Q. Did you hear Mr. Forrest say that the greater part of his orders were given in the latter part of 1944 and 1945? A. I don't recall the testimony in that regard.

Q. According to your figures all that was delivered by

Daisart was 196 bags in 1945; is that correct? A. That is correct. That is after December 17th of 1944. 2299

Q. All that was delivered in 1945, which is after December 17, 1944, isn't it? A. Yes.

Q. Is 196 bags, is that correct? A. That is correct.

Q. That is according to the invoices which they brought to Court? A. That is correct.

Q. And you did not check up, did you, on the records of the Metals to see what was delivered in 1945, what was actually delivered to any of their three plants? A. No.

Q. In the form of bags or piece goods? A. No, my calculations were confined to the records in evidence. 2300

Q. There was no investigation by you or by the FBI to find out whether these records were accurate? A. No, sir.

Q. Did you hear the testimony of Mr. Wiener that about fifty to sixty operators were employed in that place continuously throughout 1945? A. No, I didn't hear that testimony.

Q. Chiefly on the manufacture of bags? A. No; I didn't hear his testimony at all.

Mr. Hart: That is all. 2301

(Conference at the Bench between Court and counsel not within the hearing of the jury and not within the hearing of the Reporter, after which the following took place:)

Mr. Hart: If the Court please, may I make the request that I be permitted to absent myself for ten or fifteen minutes?

2326 prior to the time that these records went into evidence and I checked them against the records as they went into evidence and put the case number down.

Q. In other words, it is possible that an entry might have been made here of an exhibit which did not go into evidence ultimately? A. As far as I recall, the exhibits that I listed on this sheet are all in evidence.

Q. But you cannot find this exhibit either? A. I cannot find that in this particular batch of invoices.

The Court: Perhaps they are mixed up in some
2327 of these other papers.

Mr. Siegel: Well, I have been looking.

Mr. Rudykoff: What is that number?

Mr. Siegel: 46433.

If your Honor pleases, he said that he prepared this while the trial was in progress before papers were received in evidence.

The Court: And then he said he checked the papers as they went into evidence. It may be that they are around here somewhere.

Mr. Siegel: That is all.

2328 The Court: Did you get these figures from an invoice that was offered in evidence?

The Witness: Yes, your Honor.

Mr. Siegel: I object to that question.

The Court: Your objection is overruled.

Perhaps you can find the paper in the Court, Mr. Rudykoff.

2368 be in such a position that if uncontradicted and believed by the jury beyond a reasonable doubt they may legally find the defendant guilty because the Government has established the proof of every essential element of the information.

Now in this case they have not established every essential element of the information. They have not established any of the essential elements set forth in the informations. I know of no proof in this case that this defendant did not have the right to use this priority. I know of no proof in

2369 this case that this defendant had no right to extend this priority. I know of no proof in this case that this priority, which was extended to the defendant by the Metals Disintegrating Company, limited the quantity or type of merchandise which he was to purchase.

On its face it is a blanket priority, and he was entitled to order the merchandise set forth in the various counts in the information.

I am not dealing now with the question of the second information—I will come to that—but I would like to have this considered separately, and

2370 for that purpose—

The Court: I intend to consider it separately.

Mr. Hart: For that purpose I would like to have your Honor examine Exhibit 5—this is a copy of it, or rather, this is the original of it—and ascertain that there is no limitation on the quantity which the defendant may order.

In other words, the charge is that the defendants herein were not entitled to apply or to extend for the materials specified in these orders—

Recross Examination by Mr. Hart:

2329

Q. Did I understand you to say that you prepared this exhibit before these invoices were offered in evidence? A. In certain instances I prepared certain of the schedules prior to the time that they were offered into evidence.

Q. Let's have a regular answer to the question: Did you prepare any part of these exhibits, referring now to 151 to 157 inclusive, or 158, the last exhibit, prior to the time that the actual invoices and orders were placed in evidence? A. Yes, sir.

2330

Q. Did you make any changes in the schedules? A. Yes, I did.

Q. Did you make the changes on the schedules?

The Court: Changes of what nature?

Q. Of any nature, amounts, yardages, dollars. A. Yes, I made changes on the schedules.

Q. In dollars or yards? A. Oh, not in dollars or yards. I eliminated certain sales and I included others.

Q. When did you complete these schedules? A. These schedules were completed—well, all of the schedules were completed by yesterday afternoon.

2331

Q. Well, you had some of the schedules completed Friday, didn't you? A. That is true; some of them were completed by Friday.

Q. Which ones did you have completed by Friday? A. I had those completed which referred to the examination of the Metals Disintegrating invoices and purchase orders.

The Court: The limitation applies when the order is given to perform under a contract, and then the person who gets this priority is entitled to order only so much as is required to perform the contract, to carry it out. 2371

Mr. Hart: But in this case, if the Court please, the orders were given subsequent to the acquisition by the defendant of the merchandise, because they did not know when the Government was going to call upon them for bags, and they stated that they expected the defendant to have on hand material with which to manufacture the bags. The only way this— 2372

The Court: What have you to say to that last statement, Mr. Rudykoff?

Mr. Rudykoff: I think that assumes too much. The letter, if I recall it correctly, simply is a response to indicate that priority that the defendant corporation may use in connection with the orders placed by Metals Disintegrating, and I think one would have to strain it to a breaking point to take in the proposition that is advocated by counsel for the defendant.

However, there is evidence in the case—and it comes from one upon whom the defendant relies so heavily, and that is Forrest—that the intention was that the defendant have enough materials on hand to cover orders placed, and he was to be guided by the business that they had been doing in the past. 2373

In other words, obviously it would be a rash assumption to order 1,000,000 yards of material, say for 50 bags, and I am only assuming a state of

2338 The Court: The extension is C-125-239, which concerns the unlawful application and extension of priorities.

Mr. Siegel: And what is the other one, Judge?

The Court: The other one is C-125-240, and that charges unlawful diversion of goods obtained with assistance of preference ratings. The indictment, No. 126295, charges the crime of conspiracy to violate the laws of the United States.

Mr. Siegel: May I then proceed to make my motions?

2339 The Court: Just two seconds and I will be with you.

Mr. Siegel: All right.

The Court: All right, Mr. Siegel, we will hear you now. I suggest that you confine the motion first to the information, C-125-239.

Mr. Siegel: Yes, sir.

The Court: We will hear that first and hear you on that; and hear Mr. Hart on that, and we will hear Mr. Rudykoff, and when that is disposed of, we will take up the other information in the same manner, and then the indictment.

2340 Mr. Siegel: May I take them count by count?

The Court: Yes, that is the way I would prefer that you do it.

Mr. Siegel: All right, fine.

On behalf of the defendant Albert J. Deeb I move for judgment of acquittal and to dismiss the counts contained in Information C-125-239 pertaining to unlawfully and wilfully and knowingly extending and acquiring the preference rating.

Taking each count separately, I would like to call the Court's attention to Count No. 1, pertaining to 50,000 yards of goods ordered from A. Steinam Company, Inc., on December 13, 1944. There is absolutely no evidence of any kind in the record that in any way implicates the defendant, Albert J. Deeb with respect to the purchase of such goods from A. Steinam Company. 2341

The Court: Is there any exhibit in evidence concerning that count, Mr. Rudykoff?

Mr. Rudykoff: With regard to Deeb?

The Court: With regard to Deeb. Perhaps you can save some time if you are prepared to make recommendations concerning this information. 2342

Mr. Rudykoff: Well, yes, I think I can indicate our position. We are now speaking of 239?

The Court: 239, yes.

Mr. Rudykoff: With regard to the counts which involve Fine Goods, they are Counts 22 and 31, I submit that there is direct evidence there which ties in Deeb, and my recollection is that the orders in those cases were physically received from Deeb.

Mr. Siegel: We are not discussing that—

The Court: Go ahead. 2343

Mr. Rudykoff: I think the same is true as to Counts involving Marvlo, which are 23 and 29. I think substantially with regard to those four counts there is direct testimony of the involvement of Deeb.

Now, with regard to these counts which I now mention, I will be glad to state the position of the Government. I now have reference to Counts 1,

2344 3, 11, 12, 24, 27, 28, 30, 32, 36 and 37. As to those counts, the Government's position is that the materials which are involved in the conspiracy came from the suppliers indicated in those columns and on that basis the defendant Deeb is to be considered a principal.

With respect to the remaining counts, and they are as follows: Count 2, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 25, 26, 34, 35, 38, 39, 40 and 41, the Government recommends dismissal. And the position of the Government is the same with
2345 regard to the other information which is 240.

The Court: And the same count numbers?

Mr. Rudykoff: Yes, your Honor.

The Court: The Government then, as I understand it, recommends dismissal as to the defendant Deeb of counts in the informations C-125-239 and C-125-240 of Counts 2, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 25, 26, 34, 35, 38, 39, 40 and 41, is that correct?

Mr. Rudykoff: That is correct, your Honor.

The Court: The Government moves to dismiss those counts as to the defendant Albert J. Deeb on
2346 both informations?

Mr. Rudykoff: That is correct.

The Court: The motion is granted, and as to the defendant Albert J. Deeb those counts which I have just enumerated are dismissed and a judgment of acquittal will be directed as to the defendant Albert J. Deeb on those counts.

That leaves standing against Deeb on both informations Counts 1, 2, 3, 11, 12, 24, 27, 28, 30, 32, 36, 37, 22, 31, 23 and 29.

Mr. Siegel: What is that 22, 31— 2347

The Court: 23 and 29.

Mr. Siegel: May I continue on my argument with respect to the other counts that have not as yet been dismissed?

The Court: Yes.

Mr. Siegel: First I should like to take the Counts: that no proof to my knowledge has been offered at all with respect thereto, and those are Counts No. 8 and 9—

The Court: Those are dismissed. That has been disposed of. 2348

Mr. Siegel: That is right. 15 is out; 27, that is not out.

The Court: 27 is not out.

Mr. Siegel: On 27 there has been no proof offered. On 33 there has been no proof offered. 38 is dismissed. So there is no proof offered on these counts at all, to my best knowledge, and I would ask that they be dismissed.

The Court: The motion is denied. I understand that on Counts No. 1, 3, 11, 12, 24, 27, 28, 30, 32, 36 and 37, the Government claims or contends that as to those counts merchandise which was later sold 2349 by the defendant Deeb and sold for the account of the corporate defendant—

Mr. Rudykoff: I do not claim that he personally sold them in each case, but I do say that they were sold in pursuance of a conspiracy.

Mr. Siegel: We are not on conspiracy yet.

Mr. Rudykoff: We are at the point now. Therefore, he was a principal with regard to the purchase of the material under the Aiding and Abetting

2392 The Court: There are other circumstances in the case that would warrant the jury in drawing an inference that such was the situation. Your motion is denied.

Mr. Siegel: I respectfully except.

The Court: Now we will take up the indictment.

Mr. Siegel: Do you want Mr. Hart to make his motion first on the indictment?

The Court: Either way. Whichever you want to do, gentlemen. You can agree amongst yourselves.

Mr. Hart: If your Honor please, with respect to
2393 the indictment for conspiracy, I respectfully move to dismiss the indictment and for the direction of a verdict of acquittal on behalf of the defendant Daisart Sportswear, Inc. and the defendant George Smith upon the following grounds:

First, there is absolutely no proof whatsoever that the defendant, together with Albert J. Deeb, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States which are set forth in the indictment. As a matter of fact, there is no proof in this case that Smith and Deeb
2394 ever saw each other.

The only proof in this case which by a stretch of the imagination might indicate that Smith and Deeb knew each other or were ever together at any particular time is the testimony of one witness who said that he saw Deeb at the office of the Daisart Sportswear, Inc. That witness did not testify that Smith was there at the time or did not testify to any conversation had between Smith and Deeb, or, as I said

2350 Statute, and at any rate there is a question of fact for the jury.

The Court: I am inclined to think—

Mr. Siegel: Will your Honor let me finish my argument?

The Court: Counsel, I am inclined to think that it does present an issue of fact for the jury to determine.

Mr. Siegel: Do you mind if I finish my argument?

The Court: When I am through, you may go
2351 ahead. Now, you may proceed.

Mr. Siegel: It is incumbent upon the Government under 239 to prove that this defendant unlawfully, wilfully and knowingly applied and extended, and unlawfully, wilfully and knowingly aided and abetted in the application and extension of the preference rating. Now, I am not alluding at all to the conspiracy. I have not come to that as yet. We are now talking about the two informations which were filed several months before the conspiracy indictment was filed.

As a matter of fact, I believe the informations
2352 were filed in March and I think the indictment was filed in September.

There has been no proof of any kind offered with respect to Deeb playing any part whatsoever in: One, obtaining the priority; Two, in ordering any of these goods under that priority, or in being active in any shape or form or manner with respect to channeling or directing any of these goods that were bought under this priority with the exception that there is some proof in the case of the Marvlo

did not testify that both of them were there at the same time. 2395

Now, conspiracy, of course, must start out by an agreement, a combine—

The Court: The Government contends in this case, as I take it, that there are circumstances from which the jury may reasonably infer that there was an agreement or a conspiracy. There is no direct proof of a meeting of the two, but the Government claims that the circumstances are sufficient to warrant the inference, a reasonable inference, that they acted in concert and that they did so conspire. It is based upon circumstantial evidence rather than direct. 2396

Mr. Hart: Is it not a fact, your Honor, that a conspiracy may not be spelled out by the individual acts of the conspirators unless there is proof that those individual acts were done pursuant to a common plan or scheme or an arrangement between the parties?

The Court: The proof may be based upon a number of acts from which a jury may draw the inference that they were connected or that they were concerted acts that were all done for the accomplishment of the purpose of the conspiracy. 2397

Mr. Hart: May I make a further motion to dismiss the indictment as to the defendants I represent upon the ground that there is no proof of any overt act on the part of the defendant Smith or Daisart which took place within the jurisdiction of this Court, nor is there any allegation in the indictment of any overt act. As against Smith, the indictment charges—

and the Fine Goods—rather, it is Fine Goods that 2353
Mr. Deeb participated from a standpoint of acting as a broker in obtaining or aiding in the obtaining of these goods for the Daisart Corporation.

As a matter of fact, as to those particular counts the evidence shows distinctly that after Mr. Deeb contacted the source of supply, that is, the Marvlo and the Fine Goods, that they carried on from that point with respect to obtaining or checking the credit of the Daisart Corporation, discussing the priority with the Daisart Corporation, and ultimately selling and billing the goods to the Daisart 2354
Corporation.

There is nothing here at all which ties in Mr. Deeb from the standpoint of actually aiding the defendant Daisart Corporation in respect to obtaining any of these goods under its priority which it has.

Now, as I say, I am directing my attention strictly to the proof with respect to the purchase of these goods by the Daisart Corporation, and I cannot find a scintilla of evidence at all with respect to these transactions that ties in Mr. Deeb from the standpoint of aiding or abetting in any unlawful 2355
act with respect to obtaining these goods against the priority, and it is for that reason that I ask the Court to dismiss the counts with respect thereto.

The Court: Your motion is denied. I think the evidence presents a question of fact to be determined by the jury.

Mr. Siegel: And I further move that those counts be dismissed under 240 with respect to unlawful diversion of the goods upon the same grounds.

2356 The Court: Your motion is denied. I think an issue of a question of fact is presented for the jury to determine.

Mr. Siegel: I further move at this time for a judgment of acquittal as against the defendant Deeb with respect to the indictment.

The Court: We will take up the indictment next.

Mr. Siegel: Do you want to hear Mr. Hart now on the informations?

The Court: First let me hear Mr. Rudykoff on the informations and then we will hear Mr. Hart,

2357 and in that way we may save time.

Mr. Rudykoff: Well, sir, with regard to Daisart and the defendant Smith—and my statement applies to both 239 and 240—the Government moves to dismiss Counts 8, 15, 33 and 38. As to the remaining counts, we submit that the documentary evidence presents an issue of fact.

The Court: You move to dismiss Counts 8, 15, 33 and 38?

Mr. Rudykoff: That is correct.

The Court: As to the defendants Daisart Sportswear, Inc. and George Smith?

2358 Mr. Rudykoff: That is correct, your Honor.

The Court: The motion is granted and a judgment of acquittal is directed as to Counts 8, 15, 33 and 38 on Informations C-125-239 and C-125-240 as to the defendants Daisart Sportswear, Inc. and George Smith.

Mr. Hart: Will your Honor hear me?

The Court: I will hear you now on the motion to dismiss.

Mr. Hart: If your Honor please—

The Court: On the informations, Mr. Hart, only, at this time. 2359

Mr. Hart: Yes.

I direct myself, if your Honor please, to the information which I will refer to as 239 as distinguished from 240. As I read the information, it charges that the defendant Daisart and the defendant Smith and the defendant Deeb violated some provision of law which is set forth in the information and the basis of that accusation is set forth in the following language:

That they "unlawfully, wilfully and knowingly 2360 applied and extended, and unlawfully, wilfully and knowingly aided and abetted in the application and extension of the preference rating hereinafter set forth to the order hereinafter described, which preference ratings said defendants were not entitled to apply or extend for the materials in said order specified."

Then is set forth the sections of the War Powers Act and the Priorities Regulations and the particular title and section of the United States Code.

Now, the basis of this charge is that the defendants ordered merchandise under a preference 2361 which they had no right to extend. The only evidence with respect to the type of preference or priority that the defendants had is the exhibit which was presented on the letterhead of Metals Disintegrating, Inc., dated March 2, 1945. I forget which exhibit that was, but it was one of the first exhibits—it may have been Exhibit 5 or 6.

I ask your Honor to take that exhibit, and it is clear from that exhibit that the defendant was authorized to order merchandise. There is no limi-

2362 tation upon the amount which he was authorized to order. There is nothing in the facts showing that there was any limitation.

The testimony reveals that once this priority rating had been extended by Metals to Daisart that it was incumbent upon him to obtain merchandise to fill whatever orders were placed by Metals with Daisart.

It must not be forgotten there was a war on at the time, and the testimony is that the amount of merchandise ordered depended upon the vicissi-

2363 tudes and fortunes of war. As the conflict progressed, if the Allies seemed in sight of victory, there was a cessation of orders. If it seemed as though the war was going to be prolonged, there were immediately new orders placed. The Navy Department placed rush orders, and, in turn, Metals placed rush orders with Daisart.

It was necessary, therefore, according to the witnesses from Metals, that Daisart have on hand at all times material with which to manufacture the completed product which caused this priority to be originated.

2364 The Court: Well, Mr. Hart, isn't that essentially a question of fact for the jury to determine?

Mr. Hart: Well, I think it is a question of law, your Honor.

The Court: I only have to determine whether or not there is a prima facie case.

Mr. Hart: That is correct.

The Court: And the other determination is for the jury.

Mr. Hart: I think, if I may interrupt your Honor, I think that your Honor has to determine the question of law. 2365

The Court: To determine whether or not there is a prima facie case from the evidence—

Mr. Hart: You have to determine a preliminary question of law in order to arrive at a determination as to whether there is a prima facie case.

The Court: I am of the opinion that a prima facie case has been presented and that it is a matter for the jury to determine.

Mr. Hart: May I ask your Honor's indulgence? I do not want to be too persistent at this late hour. 2366

The Court: Yes, you be insistent and don't mind the time. You take as long as you want. I am not limiting either counsel, nor do I intend to, on this argument.

Mr. Hart: I appreciate that, your Honor, and I am grateful.

The Court: I think it is too important to the defendants' interests, and I will not hurry you.

Mr. Hart: Thank you. I ask your Honor to indulge me for just a moment.

The Court: You take your time. 2367

Mr. Hart: There is always a question involved in the decision of a motion of this kind. The ultimate question is, has a prima facie case been made out? But that question of law cannot be decided without consideration of other questions of law as to what constitutes a prima facie case.

In order to make out a prima facie case the United States Attorney must establish prima facie every essential allegation set forth in the information. In other words, the proof as it stands must

2374 facts for this purpose, so that the entire issue is one essentially of fact.

Of course, the argument that has been addressed to the Court could be addressed to the jury and it is for them to pass on the factual situation.

Of course, another point I should like to advance at this time is this: it is almost impossible to separate the information which relates to applications from the information which relates to diversion, because the fact of diversion would have a very potent effect and bearing upon the intent of the application itself.

2375 The Court: Yes.

Mr. Rudykoff: For example, it may be shown—

The Court: Yes, that is quite clear to the Court.

Mr. Rudykoff: So that for those reasons I respectfully submit that as an issue of law clearly there is no ground for the granting of the application.

The Court: There is an issue of fact, there is no issue of law here.

Mr. Hart: May I just answer that?

The Court: Yes.

Mr. Hart: I wanted to correct the statement made by Mr. Rudykoff that it was the intention that the

2376 defendant should rely upon the past business, although it was understood that they were to have merchandise on hand.

The Court: Mr. Rudykoff points out that a large quantity of the materials obtained by the extension was, as it is claimed by the Government, used within a short time after for the purpose of other than the fulfillment of contracts for which the priorities were given. He says the fact that the materials were put

no such use gives rise to an inference that the appli- 2377
cation was unlawfully extended, and that presents an issue of fact.

Mr. Hart: Could I direct your Honor's attention to this: that none of this merchandise was delivered for a period of three months after the orders were placed. In other words, there were three months that elapsed between the time of the giving of the orders and the time of delivery, so the jury must find at the time the goods were ordered that the defendant knowingly and unlawfully applied it for this purpose.

The only way a conviction can be had under this 2378
section is that the defendants had no right whatsoever to use this priority. In this particular case they are charged that they were not entitled to apply or extend for the material they were not entitled to apply.

The Court: A person may have the right to use a priority to obtain 100 yards and if he extends that to obtain a thousand yards, ten times more than he needs, then he is guilty of a violation of the regulation.

Mr. Hart: That is exactly the point I make.

The Court: I feel, Mr. Hart, that the facts in the 2379
case, the evidence in the case presents an issue of fact as to these two defendants on this information and it should be submitted to the jury.

Mr. Hart: Might I say this in answer to your Honor's statement about a priority for 100 yards? There is no limitation as to the yardage set forth in this priority.

The Court: This letter which you refer to as a

2380 priority is simply notice that the contractor has been given such and such a priority rating.

Mr. Hart: And that was extended to the defendant.

The Court: To cover specific orders given to him under those contracts. I think an issue of fact has been presented for determination by the jury.

Mr. Hart: All right, I respectfully except.

The Court: Your motion is denied except with relation to the counts which have already been dismissed, that is, Counts 8, 15, 33 and 38.

2381 Now, have you any further argument on the other information which concerns the unlawful use?

Mr. Rudykoff: Before we get to that, if the Court please, we are dealing with the informations, and my attention has been called to the fact by the ever watchful clerk that Count 33 has been dismissed as against the defendants Smith and Daisart Sportswear Inc. but it has not been dismissed as against the defendant Deeb. I now move that that count be dismissed as against Deeb.

The Court: The motion is granted.

Mr. Hart: I make the same motion with respect to
2382 C-125-240 upon the grounds specified in my motion to dismiss 239, and upon the further ground that there is no proof whatsoever in this record that the defendant Smith diverted any of the goods or that the defendant Daisart diverted any of the goods set forth in the various counts in the information; that the People have failed to sustain the burden of establishing beyond a reasonable doubt the guilt of either of the defendants as a matter of law.

The Court: We have already dismissed on Information C-125-240 Counts 8, 15, 33 and 38 as to Daisart and Smith and as to Deeb. As to your motion concerning the other counts, it is denied, and I think an issue of fact is presented for determination by the jury. 2383

Mr. Hart: With respect to these counts that have been dismissed, is there any statement contained in the schedules which were introduced by the last witness or any figures or facts contained in the schedules that apply to these counts?

Mr. Rudykoff: None whatsoever. 2384

Mr. Siegel: If I may be permitted just a moment, I would like to ask the District Attorney something off the record.

The Court: No, on the record.

Mr. Siegel: Or on the record.

The Court: Pardon me, Mr. Siegel please, for a minute.

It is noted in the record, then, as I understand it, Mr. Rudykoff, that none of the schedules prepared by Mr. Cogan contain any notations with reference to the counts which have been dismissed as to Daisart and Smith, Counts 8, 15, 33 and 38? 2385

Mr. Rudykoff: That is correct, your Honor.

The Court: Now, they do contain notations as to the other counts which concern the defendant Deeb which have not been dismissed, is that correct?

Mr. Rudykoff: Yes. In other words, there is testimony and there are records and documents which are being admitted as against the other two defendants which should not be inserted in the case as

2386 against Deeb, and I am quite agreeable to agreeing on a charge—

The Court: We will have to give the jury proper instructions on that, and if you counsel cannot agree on the wording of it, Mr. Siegel and Mr. Rudykoff, I will incorporate it in my charge.

Mr. Siegel: I would like to ask—

The Court: Wait until I make a notation of that. All right.

Mr. Siegel: I would like to ask the Court, getting back to C-239-240—I have just gone over this matter
2387 with my client and I have also looked at my records and I cannot seem to find any connection as to 1, 3, 11, 24, 30 and 32. That refers more particularly to Stemam Company and Berger & Sherin.

I would like to ask the District Attorney whether there is any proof at all tieing in Mr. Deeb with respect to those materials of Stemam Company and Berger & Sherin in Count 32. I cannot seem to find any at all in my records, and even though your Honor has ruled on it, in the interests of justice I want to make sure that we have it here.

2388 Mr. Rudykoff: Well, whatever I say will be substantially a repetition of what already has been said, but our position in its essence is that there was a conspiracy to sell finished piece goods in violation of the Emergency Price Control Act and that the materials which were sold in pursuance of that conspiracy were in part received as a result of orders which are described in the two informations, and as to which we have asked the Court to submit the case to the jury as against your client as well as the other two defendants.

Mr. Siegel: If your Honor pleases, I remember distinctly, on the basis of the exhibits offered by Mr. Rudykoff, that there was no source of supply of A. Steinam Company, Inc. or Berger & Sherin as to the defendant Deeb whatsoever. I recall absolutely no testimony in which any goods were traced to the source of Steinam Company or Berger & Sherin with respect to any of the sales made by Mr. Deeb. 2389

Mr. Rudykoff: Well, you are confining your statement to sales with which the evidence might or might not show that Mr. Deeb personally had something to do— 2390

The Court: If he was acting in concert with the others it is binding on him.

Mr. Siegel: As I say, there is no proof at all that Mr. Deeb acted in concert with anybody else with respect to the sale of any goods stemming from these sources.

The Court: The Government claims that circumstances are present and evidence was presented under which an inference might reasonably be drawn that such is the case.

Mr. Siegel: As your Honor mentioned a few minutes ago, they must make out a prima facie case with respect to evidence which in some way ties in the defendant Deeb with respect to the application and the diversion of these goods. There has been no proof of any kind either from the standpoint of obtaining the goods or selling the goods stemming from the source of Steinam Company or Berger & Sherin with respect to the defendant Deeb; none that I can recall, unless the Court can recall any such testimony at all. 2391

2398 The Court: I hold, Mr. Hart, that any overt act shown to have been done by any one of the conspirators to accomplish the purpose of the conspiracy —in other words, it is sufficient if the Government establishes the commission of any one of the overt acts alleged to have been committed by any one of the conspirators.

Mr. Hart: I agree with your Honor's statement of the law that an overt act committed by any one of the conspirators may be sufficient to support an indictment, provided however that they show that
2399 there is a conspiracy. The conspiracy may not be interred from the overt acts.

The Court: That is for the jury to determine from the evidence, and I will instruct the jury, of course, that they must first find that there was a conspiracy, and then after having determined that, then determine whether an overt act was committed in the pursuance of the conspiracy.

Mr. Hart: Will your Honor instruct them on the question of inference upon inference in this respect: that if they find an overt act—

2400 The Court: We won't go into a discussion now of the charge.

Mr. Hart: What I want to point out—

The Court: I made that statement more or less as a gratuitous statement, because we are at this time concerned with the ruling on your motion to dismiss the indictment.

Mr. Hart: If I made a mistake in asking your Honor, I was misled—

The Court: You were perhaps misled by me.

Mr. Hart: The point that I wanted to emphasize is this: I am making my motion to dismiss upon this ground: that your Honor cannot charge the jury and you cannot submit it to the jury for the purpose of letting them draw an inference that an overt act committed by either one of them was in furtherance of the conspiracy, and then draw the further inference from the commission of the overt act that there was a conspiracy, because it is drawing inference upon inference. 2401

The Court: It will not be done in that way.

Mr. Hart: That is the only way it could be submitted. 2402

The Court: That will be a matter for me to charge.

Mr. Hart: I predicate my motion and I urge my motion to dismiss upon the ground that mere proof of an overt act is not proof of a conspiracy. Mere proof of an overt act without additional proof that it was done in furtherance of the conspiracy may not be used as a basis for inferring or presuming there was a conspiracy.

The Court: I think your statement of the law is fairly accurate but that is not the situation presented by the evidence in this case. 2403

Your motion is denied for the dismissal of the indictment as to the defendants Daisart Sportswear, Inc. and George Smith. However, I have reserved decision on the motion that you made on Monday, I think it was.

Mr. Hart: Yes, I understand. If it is necessary to take an exception, I most respectfully except to the denial.

2404 Mr. Siegel: On behalf of the defendant Albert J. Deeb, I move for a judgment of acquittal and dismissal of the indictment as against him upon the ground that the Government has not established by any proof at all the existence of any conspiracy, upon the ground that no prima facie case has been made out against the defendant Deeb as to the existence of the conspiracy as alleged in the indictment.

More particularly, that there has been no proof offered here that the defendant Smith and the defendant Deeb in the jurisdiction of this Court did

2405 conspire to commit the acts alleged in the indictment. There has not been any proof other than some sales of merchandise that had been made and a possibility that there had been an overcharge made on those sales, but there was no proof in any way tieing in any of those sales with an original combination of two individuals by the names of Deeb and Smith as to a conspiracy to commit a crime to violate the maximum price regulation No. 127.

As I say, there has been no direct proof of any kind offered in this case as to the existence of a conspiracy.

2406 The Court: I think you are correct. The Government contends, as I take it, that there is circumstantial evidence to prove that there was a conspiracy and there is no direct proof.

Mr. Siegel: Yes, Judge, and the fact that there may have been certain sales, that in and of themselves would have constituted a violation of Regulation No. 127, we are not proceeding upon that theory in this conspiracy charge at all.

The Court: No. 2407

Mr. Siegel: I do not believe that at any point in the evidence the Government has established any prima facie case with respect to the two individuals meeting and forming this combination or this confederacy to conspire against the Government with respect to maximum price regulation 127. There hasn't been any such proof offered here at all, and upon that ground I would move that the indictment be dismissed as against the defendant Deeb.

The Court: Your motion is denied.

Mr. Siegel: Respectfully except. 2408

The Court: Now, is there any evidence to be offered by the defendant Daisart Sportswear, Inc. by way of defense?

Mr. Hart: I understand the Government has rested, if the Court please.

Mr. Rudykoff: Yes.

Mr. Hart: I ask that the evidence which was taken out of turn, namely, the evidence of the two character witnesses, be considered part of the defendants' case.

The Court: Yes, that was my understanding of the arrangement. 2409

Mr. Hart: And upon that testimony the defendant Daisart rests and the defendant George Smith rests, and if it is necessary, I renew my motions made at the close of the Government's case upon the grounds specified at that time, and now upon the additional ground that upon the entire case the Government has failed to sustain the burden of proving the defendants guilty beyond a reason-

2410 able doubt as to the counts set forth in the informations and the charge set forth in the indictment.

The Court: That is, the remaining counts?

Mr. Hart: Yes, the remaining counts.

The Court: Your motion is denied.

Mr. Siegel, have you any witness to offer?

Mr. Siegel: I have no witnesses to offer.

The Court: We will consider the testimony of the clergyman as part of your case.

Mr. Siegel: Yes. I also will move at this time, at the close of the case, that the counts in the In-

2411 formations 239 and 240 be dismissed as against the defendant Deeb upon the ground that the Government has not proven beyond any reasonable doubt the crime as alleged in said counts. And I further move that the indictment of the charge of conspiracy as to the defendant Deeb be dismissed upon the ground that the Government has failed to establish beyond a reasonable doubt as a matter of law the commission of any such offenses alleged in the indictment, and for that reason I move for a judgment of acquittal as against the defendant Deeb upon the informations and upon the indict-

2412 ment.

The Court: Your motion is denied.

Mr. Siegel: I respectfully except.

The Court: We will now take up the requests of the defendants. I understand that joint requests have been submitted by the three defendants.

Have you a copy of the requests, Mr. Rudykoff?

Mr. Rudykoff: I have a copy somewheres. I will locate it.

The Court: For the purpose of the record, then, 2413
I suggest that one of the attorneys for the defendants read the requests by number and I will rule on them, so that we will have a record made of the requests and the rulings.

You gentlemen will be advised of the rulings so as to guide yourselves in summation. Mr. Siegel or Mr. Hart, who wants to read the requests? I understand that you are submitting joint requests.

Mr. Hart: That is correct, Judge.

Mr. Siegel: The first request we submit is as follows: 2414

That the indictment is simply an accusation and has no probative force and is not to be considered by the jury in determining the guilt or innocence of the defendants or either of them.

The Court: The Court will charge the substance of that request but not in the language given.

Mr. Siegel: No. 2 is the same as No. 1 except that it refers to the two informations.

The Court: As to that the Court will do the same. It will charge the substance of the request but not in the language requested.

Mr. Siegel: No. 3: The burden rests upon the Government to establish the guilt of the defendants beyond any reasonable doubt. That from the beginning of the trial until the end, the District Attorney has the burden of establishing beyond a reasonable doubt every fact essential to the conviction of the defendant or defendants; the defendant or defendants have no burden to sustain. 2415

The Court: I will charge the substance of that request but not in the language requested.

2416 Mr. Siegel: No. 4: The defendants are entitled to the benefit of a reasonable doubt, not only as to the case made by the prosecution, but as to any defense which he might have interposed.

The Court: I will charge the substance of that request but not in the language given.

Mr. Siegel: No. 5: In criminal cases the burden of proof always remains the same and rests upon the prosecution. In order to convict the defendants you must be satisfied from the evidence, beyond a reasonable doubt, that the defendants are guilty
2417 of the crime charged in the indictment or in the informations.

The Court: The Court will charge the substance of that request but not in the language requested.

Mr. Siegel: No. 6: By the interposition of the plea of "Not Guilty", the defendants ~~have~~ placed in issue every material fact constituting the offenses charged, and as a result of such plea of "Not Guilty" there arises a presumption of innocence which remains with the defendants throughout the trial and this presumption must be indulged in by the jurors even after they have retired to
2418 deliberate and throughout their deliberation until the time arrives, if it does arrive, that each of the jurors is satisfied beyond a reasonable doubt of the guilt of the defendants.

The Court: I will charge the substance of that but not in the language requested.

Mr. Siegel: No. 7: The plea of "Not Guilty" and the presumption of innocence arising therefrom, obviates the necessity of proof on behalf of

the defendant, either by calling witnesses or personally testifying and the failure of the defendant or defendants to take the witness stand and testify in their own behalf does not create any presumption against either one of them. The jury is charged that it must not permit that fact to weigh in the slightest degree against any such defendants nor should this fact enter into the discussion or deliberations of the jury in any manner. 2419

The Court: I will charge the jury upon the failure of the defendants to take the stand, but not in the language requested. 2420

Mr. Rudykoff: May I be heard on that, if the Court please?

The Court: Yes.

Mr. Rudykoff: As to No. 7, I would think that the portion beginning with "the failure of the defendant or defendants to take the witness stand" and so forth, down to the end would be a fair charge, but I do not think—

The Court: I had in mind to charge parts of it.

Mr. Rudykoff: My objection would be to the beginning of it, but the balance of it would be a fair charge. 2421

The Court: But not in the exact language.

Mr. Hart: May I, in connection with that, ask your Honor to do this, and I think your Honor will: to instruct the jury particularly that they are not permitted to discuss the failure of the defendants to take the stand while they are in the jury room. From experience, they do discuss that and we know they should not discuss it.

2422 The Court: The Court will instruct the jury on this matter as follows:

"Neither of these individual defendants took the witness stand to testify as a witness in his own behalf, and no officer or agent testified on behalf of the corporate defendant. A defendant may testify as a witness on his own behalf, but his neglect or refusal to testify does not create any presumption against him, and his failure to so testify should not be considered in determining his guilt or innocence."

2423 Mr. Hart: I would like the words "discussed by the jurors in determining—"

The Court: I think the charge as I have just read it fairly presents the law to the jury, and that is the language the Court intends to use.

Mr. Siegel: I respectfully except as to No. 7 in not charging in the language submitted to the Court.

Do you join in that, Mr. Hart?

Mr. Hart: Yes, I do.

Mr. Siegel: No. 8: While circumstantial evi-
2424 dence should be considered by the jury for determining the guilt or innocence of the defendants, no conviction can be had unless the circumstances are not only consistent with guilt, but totally inconsistent with innocence. The facts constituting the circumstantial evidence must exclude to a moral certainty every hypothesis of innocence. If the circumstances are equally consistent with innocence as with guilt, the defendants must be acquitted.

The Court: I think the defendants are entitled to that charge. 2425

Mr. Rudykoff: Well, I think they are entitled to a charge which includes the last sentence, but the previous portions, particularly when they emphasize "totally inconsistent," would make the charge too heavy and might import a doubt based upon just a notion that perhaps—

The Court: You object to the word "totally"?

Mr. Rudykoff: Yes.

Mr. Hart: That is the language of the Court of Appeals in this state.

The Court: I will use that language, the exact language. I will charge as requested in No. 8 in the exact language of the request. 2426

Mr. Rudykoff: I would think that the rule is that if the circumstances are equally consistent with innocence as with guilt, that there should be a verdict of acquittal, but beyond that I think the emphasis is too great—

The Court: You do not like the word "totally"?

Mr. Rudykoff: Yes; that imports a consideration which does not necessarily include reason, and it is too vague a term. 2427

The Court: I will exclude the word "totally" from the charge; otherwise I will charge in the exact language requested.

Mr. Hart: I will consent to the withdrawal of the word "totally."

Mr. Siegel: No. 9: Evidence of the defendants' good character may be considered by you with the other evidence in the case and may in and of itself

2428 be sufficient to raise a reasonable doubt in your mind as to the guilt of the defendants, even though without such evidence of good character no such doubt would exist.

The Court: I will charge substantially as you request, but I will also add some additional comments of my own.

Mr. Rudykoff: I would think that it should be said to the jury in substance that a good reputation does not condone a crime, or words to that effect.

2429 The Court: Suppose you leave that to the Court.

Mr. Hart: Off the record, I know what your Honor will do, and it is the usual charge.

Mr. Siegel: No. 10: I charge you that the jury is the sole judge of the facts and should consider this case solely upon the basis of the evidence adduced at the trial. If in the course of the trial the jury has come to the conclusion that the Court has an opinion as to the guilt or innocence of the defendants or either of them with respect to any of the charges contained in the indictment or informations, the jury is to disregard any such impression because it is the judgment of the individual jurors and not the opinion of the Court that should control with respect to the determination of the facts in this case.

2430

The Court: The Court will charge the jury that they are the sole and exclusive judges of the facts in the case, but I decline to charge as requested in this request.

Mr. Siegel: I will take an exception as to No. 10.

Mr. Hart: I respectfully except, too. 2431

Mr. Siegel: No. 11: The jury is the sole judge of the credibility of the witnesses. If the jury believes that any witness has wilfully testified falsely with respect to any material fact, the jury may disregard the entire testimony of that witness or accept such part of it as it believes to be true and reject the remainder of that witness's testimony.

The Court: I will charge the jury concerning that matter as follows:

"If you find that any witness has deliberately and wilfully lied with respect to any material fact, you 2432
can follow either one of two courses: One, you can accept so much of the witness's testimony as you believe, and reject that which you do not believe; or, two, you may reject the whole of the witness's testimony."

Mr. Hart: That is substantially the same. That is satisfactory.

Mr. Siegel: No. 12: If it appears from the evidence that any witness has committed a crime or aided in the commission of the crime, whether it be 2433
a crime charged against these defendants or any other crime, the jury may take that fact into consideration in determining what weight it should give to the testimony of such witness. The testimony of such a witness is to be received by the jurors with extreme caution and accepted only in so far as it is harmonious with the other testimony in the case as to leave in your mind no reasonable doubt of its truth.

2434 The Court: I am inclined to charge the first sentence of that request and not the second.

Mr. Rudykoff: I think the first portion gives the defendants all they are entitled to.

The Court: The Court will charge the first sentence of that request in the exact language of the request, but not the second sentence.

Mr. Siegel: How about the latter part of it?

The Court: No, not that.

Mr. Siegel: I will take an exception, then, as to 12, on the Court's refusal to charge as requested.

2435 Mr. Hart: I joint in that.

Mr. Rudykoff: May I at this time indicate—perhaps the Court has that in mind—but it might be well in connection with this particular portion of the charge to indicate, in words or in substance, that the jury is not concerned with the possible guilt of other persons and that their guilt will not affect the guilt of the defendants.

The Court: No, I don't think I should so charge the jury. I think that if I charge the first sentence of Request No. 12, that that is fair to the Government and fair to the defendants without further

2436 comment.

Mr. Siegel: No. 13: In order to find the defendants or either of them guilty of the charge of conspiracy, the jury must be satisfied beyond a reasonable doubt as to all of the following facts:

a. That the defendants met.

b. That prior to any of the alleged acts in furtherance of the alleged conspiracy the defendants

entered into an agreement to sell merchandise above the maximum price established by regulation. 2437

c. That the merchandise alleged to have been sold is part of the merchandise specified in the informations herein.

d. That a jury cannot convict the defendants or either of them upon the theory that either of the defendants conspired with divers other persons unless the jurors are satisfied beyond a reasonable doubt that each of the defendants was a party to the conspiracy with such other persons. 2438

Mr. Hart: That means, in substance, this: that if the jury believes that Deeb conspired with John Jones, and Smith was not a party to it, or Smith conspired with Bill Brown and Deeb was not a party to it, that is not a conspiracy charged in the information or in the indictment.

The Court: I will charge on the law of conspiracy but not in the language requested. I will charge upon the necessity and obligation of the Government to prove beyond a reasonable doubt that there was in fact a conspiracy and agreement, that an overt act was done in furtherance of the conspiracy; that they must prove the conspiracy amongst the defendants and divers others. I shall charge substantially what is requested but not in the exact language or manner requested. 2439

Mr. Siegel: No. 14: The jury may not convict unless it is satisfied beyond a reasonable doubt that a conspiracy existed. It cannot convict even though it is satisfied beyond a reasonable doubt that one or both of the defendants sold merchan-

2440 dise at a price in excess of that permitted by the law or regulation. The charge is conspiracy and unless the jury is satisfied beyond a reasonable doubt that there was a conspiracy, it must acquit.

In other words, what we have in mind here is: in case there have been some sales, some goods sold in excess of ceiling price, that in and of itself does not prove any conspiracy.

Mr. Rudykoff: May I be heard on that?

Mr. Siegel: I have it in the next one.

Mr. Rudykoff: I would think this: that it is

2441 perfectly clear that from the very sales themselves the jury may conclude that there was a conspiracy but they would have to find that agreement. I will say that the offense here is not sales.

The Court: The offense is conspiracy.

Mr. Rudykoff: Yes, consipiracy.

The Court: I will charge the jury on the law on conspiracy: that there must be a corrupt agreement to violate the laws of the United States, and if they determine that the corrupt agreement was made, then they should next consider the question of an overt act, whether one was committed in pur-

2442 suance of or in furtherance of the conspiracy, but I am not going to go into the realm of speculation, such as was suggested by this request.

Mr. Hart: What we want to avoid, if the Court please, by this request is a situation where the jury may go in and they may say, "Deeb sold certain merchandise in excess of the ceiling price," or "Smith—"

The Court: You see, the last sentence in this

request is quite proper and I intend to charge the substance of that: "The charge is conspiracy and unless the jury is satisfied beyond a reasonable doubt that there was a conspiracy it must acquit." 2443

Mr. Rudykoff: As to the indictment, of course.

The Court: Yes, as to the indictment. That is as to the indictment. I assume this request concerns the indictment?

Mr. Hart: Yes, it does, your Honor.

The Court: That last sentence in substance I will charge, but I won't charge the balance of it in the language requested. 2444

Mr. Hart: I want to take exception, then, to your Honor's refusal to charge as requested.

Mr. Siegel: I respectfully except.

The Court: All right.

Mr. Siegel: No. 15: The defendants are not charged with a violation of the maximum price regulations commonly known as OPA, but are charged with the crime of conspiracy and acts of the defendants constituting violations of the maximum price regulations are not sufficient to spell out a crime of conspiracy. The Government must first establish that the conspiracy existed and that the 2445 acts were committed in the furtherance of such conspiracy. If there is a reasonable doubt as to the existence of a conspiracy, the jury must acquit even though there is no reasonable doubt as to the commission of the act constituting a violation of the OPA regulations.

The Court: The Court is inclined to charge as requested, Mr. Rudykoff, in that request.

2446 Mr. Rudykoff: I think the first sentence clearly is a misstatement of the law, and that is in so far as it says: "And acts of the defendants constituting violations of the maximum price regulations are not sufficient to spell out a crime of conspiracy."

Those are facts which the jury may take into consideration and from those facts they may find the existence of a pre-existing agreement. Now, if that sentence is excluded and the rest is read, perhaps it is a charge which really embraces a proper statement of the law.

2447 Mr. Hart: I will consent to the first sentence being stricken out if the Court will charge the last sentence.

The Court: The last two sentences.

Mr. Hart: The remainder of the request.

The Court: The remainder?

Mr. Rudykoff: Yes.

The Court: The last two sentences of Request No. 15?

Mr. Rudykoff: Yes, I think that will take care of the question of conspiracy.

The Court: That will take care of the other one

2448 he had, too.

Mr. Siegel: Request No. 16—

The Court: Will you just wait a second, gentlemen. If I had these requests a couple of days ago it would have saved me considerable trouble.

All right.

Mr. Siegel: No. 16: Your Honor is further respectfully requested to charge with respect to the information charging the unlawful application and extension of the preferance rating.

I merely call that to your attention so that you 2449
will prepare the proper charge.

Mr. Hart: That should not be numbered 16. That was put there for the purpose of apprising your Honor that the following requests to charge relate to that.

The Court: We will consider the numbers as in the requests.

Mr. Hart: All right.

Mr. Siegel: No. 17: That at the time the order for the goods was placed, the defendants, Daisart Sportswear, Inc. and George Smith or either of 2450
them were not entitled to apply or extend—

The Court: You don't want me to charge that?

Mr. Hart: That is a typographical error due to the fact that your Honor—

The Court: All right, that is withdrawn.

Mr. Hart: That the Government must prove—let me read that correctly—that the Government must prove beyond a reasonable doubt that at the time the order for the goods was placed, the defendants Daisart Sportswear, Inc. and George Smith or either of them were—the quotation is from the information—"not entitled to apply or extend the 2451
preference rating for materials specified in the orders."

The Court: Well, I will charge in substance that they must find that there was an unlawful application and unlawful extension, and I have that wording somewhere in my proposed charge.

Mr. Hart: I assume your Honor will cover that?

The Court: Yes.

2452 Mr. Hart: No. 18: That the extension of the preference rating upon its face, authorizes without limitation the application and extension of the preference rating.

The Court: No, that I will decline to charge.

Mr. Hart: Exception.

No. 19: That as to the defendants Smith and Daisart Sportswear, Inc., the jury must not convict under any count in the information unless the jury is satisfied beyond a reasonable doubt that they or either of them "Unlawfully, wilfully and
2453 knowingly applied and extended or unlawfully and knowingly aided and abetted in the application and extension of said preference rating."

The Court: I will charge the substance of that.

Mr. Hart: No. 20 is the same language with respect to Deeb.

("That as to the defendant, Albert Deeb, the jury may not convict under any count in the information unless the jury is satisfied beyond a reasonable doubt that he 'unlawfully, wilfully and knowingly applied and extended or unlawfully and knowingly aided and
2454 abetted in the application and extension of said preference rating.'")

The Court: Yes, I intend to charge the substance of that.

Mr. Hart: No. 21: Your Honor is further respectfully requested to charge as to the information charging the unlawful failure to utilize said goods for a use prescribed for goods received, as follows:

22. That in order to convict under any of the counts of this information the jury must be satisfied beyond a reasonable doubt that the goods received were not used "for a use prescribed for goods received in consequence of the application or extention of the preference rating." 2455

The Court: I will charge the substance of that.

Mr. Hart: 23. As to each count, the jury must be satisfied beyond a reasonable doubt that the goods received were not so used.

The Court: I will charge the substance of that. I intend in my charge to cover that but not in the exact wording of those two requests as you have it. 2456

Mr. Hart: 24. This I think your Honor covered. That is the particular section of the regulations that I referred to.

The Court: This is the section that was just called to my attention?

Mr. Hart: Yes.

The Court: That refers to what section?

Mr. Hart: That is based upon Section 944.11 of priority Regulations No. 1.

The Court: Does this travel on the language of that regulation? 2457

Mr. Hart: Well, I do not quote, your Honor, but, as I understand, that regulation provides that where material is obtained under a priority rating or a preference rating that it must be used for the end use prescribed in that order.

The Court: That has not been called to my attention before during the trial. I mean, that specific

2458 regulation. I am not familiar with its exact wording. Do you have a copy of that regulation?

Mr. Hart: Yes, I have it and I will leave it with your Honor, if your Honor desires it.

The Court: If you want to. I will charge the substance of that regulation. I do not know whether I will charge it in the exact language that you request.

Mr. Hart: What I would like your Honor to charge in substance is this: that in order for the defendant Smith or Daisart to be convicted, the burden is not only upon the Government of establishing that

2459 they did not use the material for ammunition bags, but also to establish that they did not use it for any other purpose for which a priority of equal or higher rating is required.

The Court: What about that, Mr. Rudykoff?

Mr. Rudykoff: Frankly, I do not have sufficient knowledge of that portion of the regulations to make any statement.

The Court: It was not called to my attention until a half an hour ago.

Mr. Rudykoff: I would like to examine it and

2460 make any comments after an examination of it, but it would seem to me—

The Court: You leave that with me, Mr. Hart, and I am inclined to think that you are entitled to the inclusion of that regulation. Whether or not I should go into the details as you have it in your request I do not know yet. I would like to read that regulation.

Mr. Rudykoff: May I address whatever is pertinent to that regulation—that is, may I be heard on that at some subsequent occasion, possibly tomorrow?

The Court: If you do it the first thing in the morn- 2461
ing. Will you be mindful of it, Mr. Hart?

Mr. Hart: Yes.

The Court: And will you leave that with me over-night?

Mr. Hart: Surely, I will leave it with your Honor.

The Court: Because I have not seen that particular one.

Mr. Hart: I did not see it myself until recently, Judge.

The Court: That is from the Commercial Clearing House report? 2462

Mr. Hart: Yes. The bottom part down there should not be considered by your Honor because that is the law as it was before the amendment on the top. In other words, the C. C. H.—the present regulation is the one you have to go on now, and the germane part of it is on the top of this page (indicating).

The Court: We will hold up the ruling on this request until tomorrow morning, as far as everybody is concerned.

Mr. Hart: Then I won't bother to read the balance of 24? 2463

The Court: No.

(Request No. 24 read as follows: "That although an 'end use' was prescribed in the orders, it is incumbent upon the Government not only to establish beyond a reasonable doubt that such goods were not utilized for such 'end use' but it is also necessary to establish beyond a reasonable doubt that they were not used for products requiring the same or a higher

2464 preference rating. In this connection the jury may consider that there is evidence that the defendants Daisart Sportswear, Inc. and Smith were manufacturing other articles such as navy pea jackets, navy leggings, army tool kits and lend-lease clothing.")

Mr. Hart: 25: In order to convict either of the defendants Daisart Sportswear, Inc. or George Smith, the jury must believe beyond a reasonable doubt that they or either of them knowingly failed and unlawfully, wilfully and knowingly aided and 2465 abetted in failing to utilize such goods for a use prescribed for goods received.

The Court: I will charge that in substance but not in the language indicated. In other words, that is the basis of the charge, the basis of that information.

Mr. Hart: That is right.

The Court: All right.

Mr. Hart: 26 is the same with respect to the defendant Deeb.

The Court: I will charge the substance of that.

2466

(Request No. 26 reads as follows: "In order to convict the defendant Deeb, the jury must believe beyond a reasonable doubt that he knowingly failed and unlawfully, wilfully and knowingly aided and abetted in failing to utilize such goods for a use prescribed for goods received.")

Mr. Hart: 27— 2467

The Court: That is on the number of witnesses called by the Government?

Mr. Hart: Yes.

The Court: I will make comments on that, but not in the language indicated here. I think I have some comment on that already.

Mr. Rudykoff: I suppose the intention is that the mere number—

The Court: The quality and not the quantity of evidence is what controls.

Mr. Rudykoff: Yes. 2468

The Court: That will be charged in substance but not in that language.

(Request No. 27 reads as follows: "The fact that the Government has called a large number of witnesses is not to be considered by the jury as a controlling factor of the determination of the guilt or innocence of the defendants.")

Mr. Hart: May I proceed with 28, your Honor?

The Court: Yes.

2469

Mr. Hart: 28 refers to the method of votes by jurors, and I ask your Honor to charge that when called upon to vote in the jury room, it is the duty of each individual juror to vote in accordance with his state of mind at the time the ballot is taken, and if a reasonable doubt exists at such time, it is his duty to vote "not guilty" and to continue to vote "not guilty" as long as he believes such reasonable doubt exists. He is not to be influenced by

2470 the fact that he is in the minority. He is to listen to the arguments of the other jurors and he is to present his arguments to them but unless such reasonable doubt is removed from his mind, his verdict shall continue to be "not guilty."

The Court: I will charge on that matter but not in the language requested: about the right of an individual to have his opinion but that he should make every effort to harmonize and blend his judgment with that of the others in so far as it can be done with justice and with the interests of the United

2471 States of America and of the defendants.

Mr. Hart: 29 refers to the compromise by jurors.

The Court: I will charge on that matter but not in the language requested. I will charge that it should make every—.

Mr. Hart: What I want to avoid and what I ask your Honor to charge is anything which will prevent jurors from going to the jury room and saying, "Well, I have a reasonable doubt on all of the counts, but I will tell you what I will do, I will go along with you on four or five of the counts."

2472 The Court: No, but I am also going to advise the jury that no juror has the right to erect an arbitrary standard and refuse to discuss the evidence or close his or her mind and his or her judgment to the reasons advanced by other jurors, but a juror should always be open to reason. And I shall proceed along that line, and I think you will be satisfied.

Mr. Hart: Will your Honor cover the compromise end of it?

The Court: I don't say compromise, but I think you will be satisfied. I will say that a juror has a right to stand by his opinion and if he is unconvinced by the arguments of the others, that juror has a right to stand by his opinion. I won't use your exact wording, but I will give the jury the substance of that. 2473

Mr. Hart: All right.

(Request No. 29 reads as follows: "The verdict should not be by way of compromise. A juror who acquiesces in a proposal that he vote 'guilty' on some of the counts in consideration of other jurors voting 'not guilty' on some of the other counts, violates his oath as a juror if at the time of such vote he has reasonable doubt in his mind as to the defendants' guilt under any of such counts.") 2474

Mr. Hart: 30—

The Court: 30 I will charge in the language requested; either in the language requested or substantially that.

Mr. Hart: I do not think the motions were made in the presence of the jury. 2475

The Court: No, the motions were made in the absence of the jury. If you want that charged, I will charge that.

Mr. Hart: No. I would like your Honor to charge this, though: the fact that some counts have been dismissed as against these defendants and others not dismissed should not be considered by them.

The Court: That is one of the requests you omitted, but the Court intends to charge the jury on that, perhaps not in your exact language.

2476 The Court intends to say in substance that the Court has dismissed certain charges or counts and with respect to those counts they are not to concern themselves nor in any manner or in any way be influenced by the fact that they were dismissed.

Mr. Hart: Or that the others were not dismissed.

The Court: We will put in there "made and dismissed."

(Request No. 30 reads as follows: "The fact that in the course of the trial objections have been 2477 made by counsel for the defendants and rulings made by the Court overruling said objections, should not be considered by the jury.")

(Request No. 31 reads as follows: "The fact that motions have been made by counsel to dismiss the indictment and informations which motions have been denied by the Court simply means that the Court believes that there is a question or questions of fact to be passed upon by the jury. The denials of said motions are not to be considered by the jury as evidence of the guilt of the defendants.")

2478

The Court: The Government's requests I will go over at leisure. There are several of them I will charge.

I am very grateful to both of you gentlemen for submitting these, but it would have been a great help to me had I insisted on them last Friday, because I prepared an outline of a charge over the weekend and it would have helped me considerably and saved me a lot of work.

Tomorrow morning, then, we will take up that question of the regulation that you have left with me—that is, 944.11—as to whether or not we should include that in the charge. 2479

It is agreeable, Mr. Siegel, that you sum up tomorrow morning for the defendant Deeb. How long will you take? I do not want to limit you too much. I would like to be out and have the jurors out of here not later than twelve o'clock. That will give you an hour and a half.

Mr. Siegel: I think that ought to be sufficient.

The Court: And then on Friday, Mr. Hart, with the help of the Lord, you will begin your summation, and then Mr. Rudykoff. 2480

(Discussion off the record.)

(Adjourned until 10:30 o'clock November 26, 1947.)

November 26, 1947, 11:20 A.M.

Trial Resumed. 2481

(Jury in box.)

The Court: I am sorry we had to detain you. We have been discussing an argument on some points of law. All right, counsel, you may sum up to the jury.

Mr. Rudykoff: May I inform the Court that the missing document has been located.

2482 The Court: Various motions have been made by counsel and the Court has ruled on those motions. Of course, the fact that the Court has ruled on the motions is really of no concern of yours. You are the judge of the innocence or guilt of these defendants on the evidence as it has been presented to you.

We will now have the summation of counsel. Mr. Siegel will sum up this morning for the defendant Deeb and then we will adjourn and we will meet Friday morning at ten o'clock.

2483 Mr. Siegel: May I proceed, Judge?

The Court: Yes.

Mr. Siegel: May it please the Court, Mr. Foreman and ladies and gentlemen of the jury: We have now reached a point in this case where counsel sum up for their respective clients and the District Attorney will later sum up for the Government.

The purpose of a summation is to more or less discuss with you the evidence in the light of how it affects, if it does, the guilt or innocence of any particular person involved.

2484 Now, here is Mr. Albert J. Deeb, who is one of the defendants in this case. He is being tried together with another defendant and a corporate defendant. You are to confine yourself as to the guilt or innocence of each particular defendant in the light of the testimony that has been adduced from the witnesses and from the exhibits, as focusing itself upon that particular individual, to determine whether in your mind there is a definite reasonable

doubt, for the purpose of determining the guilt or 2485
innocence of that person.

Now, it is very coincidental, or I should say, it just happens that I am summing up to you on virtually the eve of the Thanksgiving holiday, a holiday that is not restricted to any race, color or creed, a holiday that everybody enjoys, and people sit down and meditate to see what they have to be thankful for in this day and year.

And I am thankful about one thing: that we have an opportunity to come into a court like this and 2486
discuss the matter with people like yourselves, drawn from all walks of life, a jury of our peers. It is fortunate in the sense that not every Government or every country in the world permits an individual to have that latitude, that freedom of discussion that we enjoy in this blessed United States.

It is very apropos to our particular case because of the fact that we are trying a criminal case here and we are surrounded with the safeguard of a concept known as a reasonable doubt.

You know, in many countries today a person is accused by the government and the accusation is 2487
practically tantamount to a decree of conviction, and any trial or any hearing that is had is nothing more than a sham or a mockery; whereas here we are fortunate that we can submit a case to you people in the light of a very important concept which forms a safeguard around a defendant. That is a reasonable doubt.

Now, there are two informations and an indict-

2488 ment. The informations and the indictment are nothing more than an accusation being made by a government against an individual—I accuse you of so and so.

We have the right to plead "not guilty" to that accusation. That puts the government in a position where the government must come forward and prove beyond a reasonable doubt that this particular defendant has committed the crime or the offense that he or she may be charged with in the informations or in the indictment, and if the government

2489 fails in that respect you must acquit that defendant.

Now, reasonable doubt is a very important thing. It is different than our concept in our civil cases where we talk about a preponderance of evidence, which is entirely different than talking about a reasonable doubt, because as you scrutinize and as you examine the evidence, if there is any doubt in your mind—in other words, if it isn't clear and convincing, you should resolve that doubt in favor of the defendant and acquit him, because you wouldn't want it upon your conscience, and nobody

2490 would want it upon his or her conscience to have convicted any person with an idea in mind—well, maybe it isn't exactly as they contend it to be and consequently you should then resolve that doubt in favor of the defendant.

Now, in this particular case I think—

If your Honor pleases, I would like to tell them that a number of these charges or counts have been dismissed.

The Court: Yes.

Mr. Siegel: We are only confining ourselves— 2491

The Court: You may tell them that.

Mr. Siegel: There were certain motions made here yesterday outside of your presence. We originally were charged with 41 counts in each information. One information dealing with the unlawful aiding and abetting and extension of these priorities which you have heard discussed about in the case, and the other one as to the unlawful use to which the goods have been put, and there were 41 in each. They have now been reduced, so far as the defendant Deeb is concerned, down to 15 counts. 2492

In other words, 26 counts have already been eliminated by the Court and with the consent of the District Attorney.

Now, there is something very unusual about the counts that have remained in relation to the counts that have been disposed of. I can't very well in a short period of time go through all of the evidence that has been adduced upon this trial, this constant parade of witnesses and the exhibits that have been introduced into evidence. It presents a somewhat confused picture, I will admit. But I sat there at 2493 the table for days, with practically very little to say, representing my client, Mr. Deeb, except when any word or mention was made of the name of Deeb, which was not too often during the trial, I then naturally had to assert my rights as his counsel in any examination that took place.

Now, at no time has Mr. Deeb been associated or tied in any shape, form or manner with respect to

2494 obtaining this priority which Mr. Smith or the Daisart Corporation had. I think that is fairly obvious and it is fairly well established. There wasn't any evidence or any testimony of any kind given that Mr. Deeb played any part whatsoever in obtaining that priority or anything to do with that priority.

It was only somewhat later on, after a number of purchases were gone into, in Counts from 1 down to practically 22, getting into March of 1945, mind you, the first purchase being on December 13, 1944, 2495 according to the charges made in these counts—down to March of 1945 that we first hear of the name of Deeb, and that encompasses transactions with A. Steinam Company, with the Mead Tex, with Lazarus, with the Southeastern Cottons, and numerous other transactions with Lazarus and Regal Equipment Company—all of the witnesses admitted they had nothing to do with Deeb; they didn't know Deeb; there were no transactions with Mr. Deeb. These were all done with Mr. Smith of the Daisart Corporation, and yet some of these counts pertain- 2496 ing to Steinam have been dismissed, and some of those counts pertaining to Steinam have been permitted to remain.

Why? I don't know, I am frank to admit. I haven't seen or heard any witness or any testimony being given at any place whatever in this trial that in any way connected Mr. Deeb with any of those transactions whatsoever.

The only time I heard Mr. Deeb's name come in,

in connection with the purchase of some goods by 2497
the Daisart Corporation from the Fine Goods Company, and in what capacity did Mr. Deeb's name come in? He said, yes, that he had met Mr. Deeb. They were looking for goods. He came in in the guise of a broker; that he knew where possibly some goods could be obtained that they had use of.

Well, that was a very normal situation in those days. It still is normal today. We have brokers for real estate and we have brokers for every possible commodity that we can think of, because people don't get around. People don't know where things 2498
are. So people act as brokers and they get principals together. You need something, and I know some place where you can get it, a sale is arranged, a broker makes a commission on it—there is nothing unusual about that.

If Mr. Deeb because of the fact that he was instrumental as a broker in effecting a sale of merchandise or bringing two principals together; that is, the seller or the person that has the material, and the buyer or the person that needed the material, if that is tantamount to a commission of a 2499
crime, then we are guilty, but so is every other broker, so is every other salesman, if you want to use that word, guilty of a similar crime, and that would entail millions of people.

As a matter of fact, you heard on the witness stand many brokers testifying that they were instrumental in obtaining goods for Daisart Corporation, in effecting sales for Daisart Corporation. There is nothing unusual about that.

2500 And, by the same token, if at any time Mr. Deeb was instrumental in effecting a sale of some goods to somebody who needed it, that the Daisart Corporation may have had, and if that constitutes a crime, then he is guilty, but so is every other salesman who effects a sale from a source of material to somebody who needs it also equally guilty.

Well, I don't think we are going to be that naive to say that because Mr. Deeb at the time when everybody was working and the witnesses themselves said, "Yes, we dealt with thirty or forty

2501 brokers"—I remember distinctly the fellow who testified who said, "I dealt with thirty or forty brokers. I dealt with everybody if I could get materials because we needed materials very desperately at that time," and so did the other witnesses say the same thing. Now, that doesn't spell out any crime whatsoever.

What does Mr. Deeb do? A man has a priority. We aren't in a position to go in and investigate whether it is a good priority or whether it isn't a good priority or how much goods were being al-

2502 located. That is not our job at all. As a matter of fact, after Mr. Deeb had opened up the account with the Fine Goods, if you will recall the testimony, it went to the credit department. They said they wanted to find out whether the Daisart Corporation had a good credit before they would do any business with that corporation. They wanted to discuss with the Daisart Corporation its priorities before they would take any orders, because when they took the

orders from the Daisart Corporation they contained those priorities, and they wouldn't have sold those goods to them unless they had priorities. It had nothing to do with Mr. Deeb. 2503

What has Deeb got to do with the priorities? He merely worked as a broker, as a salesman, to earn a commission, to effect a sale of some goods from some source to somebody that needed it, and that is the whole thing that they have got in this case with respect to Mr. Deeb.

Fine Goods and one other account, I believe it was the Marvlo—two accounts that he was helpful as a broker in getting material, and a few sales that had been made by Mr. Deeb along with a Mr. Rosen and Mr. Wolfe. 2504

There were a number of other witnesses who had similarly sold material who were not being prosecuted, who were not made part of this case at all, but merely used by the Government as witnesses. If Mr. Deeb was guilty for what he did, everybody is guilty for any sale whatsoever of any goods.

I don't think that any jury here would stretch its imagination to that point of ensnaring or taking in a man who merely acted as a broker or a salesman in effecting a sale of some goods. 2505

What do they say in the information—and I think that is important. We ought to go over that together. They say, "The defendants herein"—that means the Daisart Sportswear Corporation, George Smith and Albert J. Deeb—originally they had Ida Smith but Ida Smith's name was eliminated.

2506 They say: "The defendants herein, within the Southern District of New York"—that means the jurisdiction of this Court here in New York—"unlawfully, wilfully and knowingly applied and extended, and unlawfully, wilfully and knowingly aided and abetted in the application and extension of the preference rating hereinafter set forth to the order hereinafter described, which preference rating said defendants were not entitled to apply or extend for the materials in said order," specifying Section 301 of the Second War Powers Act, 50 United 2507 States Code Annotated, Appendix Section 633, Priorities Regulation No. 1, Priorities Regulation No. 3, and Title 18, Section 550, United States Code.

"The foregoing allegation is hereby realleged for each count hereinafter set forth."

Now, this is an abbreviated form of setting forth the information. In other words, each count here is to be considered as a separate one, and this entire paragraph which I read to you must be applied to each one of those counts.

In order to pass upon the counts to determine 2508 whether the defendant Deeb was guilty of that particular reference that is made in that paragraph—in other words, you would have to find that Mr. Deeb on the 13th of December, 1944, or about that time, as to Count No. 1, that he unlawfully and wilfully and knowingly applied and extended, and unlawfully, wilfully and knowingly aided and abetted in the application and extension of a preference rating. In other words, you would

have to come to a conclusion in your mind based upon the evidence as given in this trial, and it has got to be upon the evidence—we cannot indulge in speculation, because if we are going to indulge in that, we may think of a lot of things, but we have to be guided by the evidence in the case—you would have to find that Mr. Deeb with Mr. Smith at that time worked in cahoots, actually schemed or plotted to get this priority, and then do something wrong with it after they got it. 2509

There is absolutely no evidence of any such kind in this case. There was no establishment at any time in the evidence of the case that Mr. Deeb ever got together with Mr. Smith about anything. The only evidence there was that on one or two occasions he was seen in the company of Mr. Smith. There was absolutely no light of any kind shown or shed upon the fact that these two individuals at any time unlawfully worked together to obtain this priority and then to misuse it. 2510

That applies to each and every count. That would apply to Count No. 3, which is still remaining here, which is on the Steinam Company purchase, too, and that refers to December 20, 1944. And that would have to apply to Count No. 11, which is still remaining here, with Steinam & Company into February of 1945. And that would have to apply to Count No. 12 and to Count No. 24, and all of the other fourteen or fifteen counts that we have here. 2511

In other words, you would have to find without any doubt—as I say, that is what I was stressing

2512 originally in my remarks—the question of reasonable doubt, you will have to find beyond any reasonable doubt of any kind that Mr. Deeb acted in concert with Mr. Smith or the Daisart Corporation in getting these priorities and then misusing those priorities.

I say the evidence is absolutely naked. It is absolutely bare of any such inference, and, of course, you people here are going to be the sole judges of what the evidence actually disclosed, and it is your memory that would have to ultimately
2513 control as to what the facts are as reflected by the evidence.

I say to you, and I say this very sincerely, not from any—I am not going to make any rash statements about it—I say, sitting there throughout the entire trial I have yet to find any evidence in this case that in any way whatsoever connects Mr. Deeb with Mr. Smith or the Daisart Corporation with reference to any unlawful or aiding or abetting of these priorities and then misusing them in any shape, form or manner.

2514 It is true that he worked as a broker. I don't deny that. It is true that he sold some goods. I don't deny that. So did other people work as brokers and obtain material for them. So did other people work as salesmen and sell some material for them. But that isn't what we are being charged with here. We are being charged here with a crime: that we unlawfully aided Mr. Smith or the Daisart Corporation to get these priorities in connection

with the Metals Disintegrating Company, and then 2515
to misuse these priorities. I say to you very sincerely that there has been absolutely no evidence of any kind to in any way tie in Mr. Deeb with any such fact or event.

Now, getting into a separate indictment—it wasn't enough that we had two informations, we have an indictment here. An indictment of conspiracy. Well, conspiracy is a very broad term. It is reaching a point, I think, in my mind, that if you harbor the same thoughts you have conspired. They say, in substance, that: "Between December 1, 1944"— 2516
that is going back to that first order of Steinam—"and March 31, 1947, at the Southern District of New York and within the jurisdiction of this Court, the above named defendants, Daisart Sportswear, Inc., George Smith and Albert J. Deeb unlawfully, wilfully and knowingly"—and those words are extremely important—I mean, don't underestimate those words in your deliberations because they do mean something—"knowingly, wilfully and unlawfully," in other words, you have to find that if anything had happened that it was done unlawfully; 2517
wilfully and knowingly—"did combine, conspire, confederate and agree together and with each other and with divers other persons whose names are to the grand jurors unknown, to commit offenses against the United States, to wit, to violate the Title 50, Appendix Section 901" and others of the "United States Code" and the rules and regulations including the Maximum Price Regulation No. 127

2518 and the amendments thereto under said statute duly promulgated.

"It was a part of said conspiracy that the defendants would sell, offer to sell, and deliver, in the course of trade and business, finished piece goods at prices in excess of the maximum price established therefor, and would attempt the foregoing.

"It was further a part of said conspiracy that the defendants would issue and cause to be issued invoices to the purchasers of said goods bearing the names of fictitious sellers.

2519 "It was further a part of said conspiracy that the defendants would accept from said purchasers in payment for said goods checks drawn to the order of said fictitious sellers.

"It was further a part of said conspiracy that the defendants would cash and cause to be cashed said checks at various check-cashing companies and banks.

"It was further a part of said conspiracy that the defendants would issue invoices falsely describing and overstating the quantity of said goods.

2520 "It was further a part of said conspiracy that the defendants would fail to keep for inspection by the Office of Price Administration complete and accurate records of each purchase, sale and delivery of said goods.

"It was further a part of said conspiracy that the defendants would fail to deliver to each purchaser of said goods a contract of sale or an invoice containing a full description of each type, quality and finish of finished piece goods sold."

Now, that constitutes an accusation that has been made by the United States against Mr. Deeb, together with the other persons named here, the Daisart Sportswear Company and George Smith. In other words, it is very easy to put this all down on paper and think certain things. 2521

There has been a lot of circumstances, possibly created in this case; there has been a lot of atmosphere created in this case. Witnesses, exhibits, sales, purchases, yardage—everything you could possibly imagine was brought in here, creating an atmosphere around the entire evidence of the case. 2522

Well, that's all right, but we are not going to convict people on atmosphere. We are not going to strip people of their liberty because we think, Gee, with all these witnesses they have brought here, with all these exhibits, something must have been wrong.

If we are going to indulge in that sort of thing, no man or woman is really protected so far as their rights are concerned because inferential sort of thinking may be good possibly in certain cases, but it goes a little too far.

It is a dangerous form of thinking when you are going to start imagining, Well, maybe something actually did happen. Of course, we don't know exactly, but then take this fact, well, maybe it leads us into another fact, and that fact will lead to another fact, and before you know it what we are doing is basing inferences upon inferences and we get lost in our thinking, and before you know it 2523

we are convicting somebody of something that
2524 actually didn't happen and in which he played no part.

Here is a charge, and a very serious charge, of conspiracy. In other words, the Government has said that Mr. Deeb and Mr. Smith and the Daisart Corporation have gotten together at some particular time and concocted a scheme, if you will, an idea of how they could defraud the Government, of how they could get this goods, sell the goods over ceiling price and so forth and so on.

2525 They don't charge here anything at all pertaining to a sale of goods or an overcharge of a sale of goods. That isn't what we are concerned with here at all.

There have been loads and loads of civil prosecutions brought in all the courts of this land with respect to overcharges that have been made, not sales of goods. But they don't come in with that. They involve us in a crime of conspiracy, separate and apart, nothing to do with any excess in ceiling, but they say, as part of the scheme to conspire against the Government, as one of the facts, they
2526 sold these goods over ceiling.

I say that is a very serious accusation, to come in and say that two people conspired together to concoct this scheme.

Now, what proof do they have that Mr. Deeb at any time at all got together with Mr. Smith and evolved this scheme? The evidence is absolutely bare. There isn't one scintilla of evidence in the

People's case, in the Government's case here that points to that inference at all. The only thing that 2527
we have concerning Mr. Deeb is the fact that he acted as a broker, he was instrumental in some shape, form or manner in having some goods sold by certain suppliers to the Daisart Company, and that they acted on the extension of their own credit determination, on the basis of the priorities that they got from the Daisart Corporation. Nothing to do with Mr. Deeb at all. And that Mr. Deeb at some later date, or some time or other, had sold some goods, together with a number of some other people 2528
that had sold some goods.

Now, does that spell out in your mind a charge of conspiracy, a very, very drastic charge that is being made here concerning my client, Mr. Deeb? Now, I say it is very easy to go ahead and make your accusation, but it is another thing to prove it beyond a reasonable doubt so that you people will be asked to say that this man actually did do this and consequently he is guilty. I say you have got to go a long way with any of the evidence that was brought into this case to arrive at that determination. 2529

And, after all, this is our day in Court. You are the people here who are going to apply your own good common sense, your own intelligence, to the interpretation of the testimony, the weighing of the testimony as given to you in this case, as it points and focuses itself upon Mr. Deeb, because I am here pleading for Mr. Deeb, representing him. Mr.

Smith and the Daisart Corporation are represented
2530 by Mr. Hart, and Mr. Hart will sum up to you and give you his version of the facts at a later time, but I don't want to lose sight of the fact that you have got to take this defendant Deeb and place him before yourselves in the light of all the testimony that has been brought in here to determine beyond a reasonable doubt—that is, no doubt whatsoever—that first, he conspired with Mr. Smith and the Daisart Corporation in connection with getting these priorities, and that he further acted in concert with
2531 him to sell all the goods at over ceiling prices and make some money.

I don't know, I can't see it, and I am not saying that because I represent Mr. Deeb, believe me. I am not holding myself out—I am not a simple lawyer. I don't think there is any vestige or any indication of any crime in connection with this entire case so far as my client is concerned.

I know that if you add one and one you get two. I know that I have listened to the evidence here and all that I could get out of it, as confusing as it was at times, all that I could make out of the entire
2532 case was the fact that here was a man on certain occasions, on just about two occasions, as a matter of fact, who was helpful as a broker in obtaining goods, the way other people have done, and I know loads of brokers that do exactly the same thing. And he earned a commission. Or at other times he had sold some goods just like other people who testified here, as other brokers do, and he earned a commission.

Now, if that constitutes a crime, then I cannot understand what a crime is. I see nothing at all illegal about it. I see nothing at all that is wrong in it. 2533

If there had been some sales here and they didn't charge the right prices with all those regulations that they had during those days—and I went to law school and I went to college, and believe me when I read some of those regulations I couldn't make them out head or tail and I still can't because you read one paragraph and then you are referred to another paragraph, and by the time you get through you are so lost you can't make head or tail of what it is all about and what they actually do want. 2534

If there had been some sales made, they could have gone ahead and sued these people in the proper tribunal, as the Government has done in thousands of other cases for an overcharge, and collected whatever it was entitled to. You don't go and charge people with commissions of crime—we don't go in and concoct an idea that because a man did that, that here was a fellow Smith or the Daisart Corporation, they got goods on a priority, whatever they did with the goods, now let's take them in. We will try Daisart Corporation and Smith and Deeb all together. 2535

We can't do that in justice. It isn't right. It isn't fair. If Deeb did something he should be made to pay for whatever he did. But, on the other hand, if he didn't do something, he shouldn't be made to pay for something that he didn't do.

As I say, if we are going to convict this man on
2536 the basis of some sales that were made, on the basis of some goods that were obtained in the capacity of a broker, then we might as well go out and convict every broker in New York City and every salesman in New York City who has done exactly the same thing.

Now there has got to be a limit to that and I don't think that any of you ladies and gentlemen here, in good conscience—and just apply your own good horse sense to a situation like this—would permit your imaginations to be stretched to that point to
2537 find a criminal element in such an act.

I don't want to go through here all of the evidence and take witness by witness. I think you have all been very patient. I think you have listened very diligently to all of the facts. As I say, your memories are going to control on what the facts were. I merely try in my very naive or humble way to point out to you on behalf of the defendant Deeb whether there was any evidence at all that focused itself upon Mr. Deeb from the standpoint of a commission of a crime.

2538 And I say to you, ladies and gentlemen, that there was no evidence, there was nothing here produced of any kind that involved that man in a crime. And before you strip a man of his liberty, of his freedom, that we enjoy here, before you take it away from a man and his family, before you do a thing like that, you have got to be convinced in your mind beyond any reasonable doubt, beyond any shadow

of a doubt, that what the Government has accused him of he actually has done without any qualifications whatsoever. 2539

And if you come to any conclusion in your mind or any doubt in your mind that he may or he may not, and, for heaven's sake, resolve that doubt in favor of the defendant, because the law says you should resolve that doubt in his favor, because you don't want to possibly convict anybody that may be innocent, because as the Court will charge you later on, that where you have any set of facts where innocence is equivalent, or, let's say on the same footing with guilt, that creates enough reasonable doubt and you should resolve it in favor of the defendants, because there must be something to this idea that we are innocent until proven guilty, not like in some places where we are guilty until we are proven innocent. 2540

We are innocent here. That is why we put in a plea of not guilty. That is why there was no evidence given, because there was no need to give any evidence to you on behalf of the defendant, because the defendant did not commit any crime, and that plea of not guilty is enough to raise a reasonable doubt that the Government must prove that accusation to such a point where you can't possibly say in your own mind, well, maybe yes and maybe no. You will have to come to a conclusion from the evidence in the case that there is no doubt of any kind that this man actually did the very things that I read to you in that information: knowingly and unlawfully—and those words are very important words. 2541

We can do things, I will admit, in life innocently.
2542 We have all made mistakes. We can do an innocent act and it turns out that that innocent act wasn't just as innocent as we thought it was. But you have got to start out that you did this thing wilfully and knowingly and that you knew you did something wrong.

Where has the wrong been in this case? Here is a man who acts as a broker in two transactions out of 41 counts, and is instrumental in just opening up a contract, followed up by the source of supply to the ultimate purchaser with the priority and credit rat-
2543 ing and whatnot. And on other occasions he made some sales just like everybody else did, and if that is going to be tantamount to a crime, then I say there can't be any justice whatsoever, and I know that you ladies and gentlemen would not be a party to any such thing or to any such idea, to convict a man and strip him of his liberty on the basis of what the Government has adduced here with respect to my client, Mr. Deeb.

And I do hope that you will give this evidence in the case very, very serious consideration in the light
2544 of all the things that I have tried in my very humble way to point out to you, and that when you get through with your deliberations, you will come to the conclusion that the defendant Mr. Deeb is not guilty. Thank you.

The Court: We will adjourn now until Friday morning at ten o'clock. I wish all of you a very happy Thanksgiving.

(Adjourned until November 28, 1947, at 10:00 A. M.)

November 28, 1947, 10:00 A. M.

2545

Trial Resumed.

(Jury not in box.)

The Court: In the absence of the jury, I feel that I should make known my ruling concerning Exhibit 147-A. At the time that it was offered in evidence, I reserved decision and it was my intention to announce my decision with reference to that exhibit before the summations.

2546

However, in order to permit counsel to argue the matter at length, on Wednesday afternoon the defendant Deeb's attorney summed up, and I felt that that exhibit, since it had already been excluded as to the defendant Deeb, that no injustice would be worked on the defendant Deeb by having his counsel sum up before the ruling.

I am now prepared to announce my decision with reference to that exhibit:

2547

During the course of the trial, objection was made by defendant's counsel as to the reception in evidence of Exhibit No. 147-A. As to the defendant Deeb, the objection was sustained. The Court ruled and directed the jury that this exhibit was not received in evidence as to the defendant Deeb, and was not to be considered by them in determining the guilt or innocence of that defendant Deeb. As to the other defendants, Daisart Sportswear, Inc. and George Smith, the Court reserved decision and permitted the exhibit to be offered in evidence and read to the jury.

2548 These defendants raised the objection that the statement was privileged and the circumstances surrounding the making of the statement effected an amnesty as to the defendants, Daisart Sportswear, Inc. and George Smith, and that, therefore, the informations and the indictment should be dismissed as to them and judgment of acquittal directed.

Title 50, Appendix Section 922, subdivision g, of the Emergency Price Control Act, provides:

"No person shall be excused from complying with any requirements under this section because of his
2549 privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 shall apply with respect to any individual who specifically claims such privilege."

It appears from a reading of the exhibit itself, that on April 30, 1946, the defendant, George Smith, was subpoenaed, both as an individual and as an officer of the Daisart Sportswear, Inc., to appear and give testimony before an official of the Office of the Price Administrator. The Court, therefore, rules as to the defendant, George Smith, that the statement and
2550 exhibit 147-A is not admissible as against him. It is quite clear from a reading of the law that no privilege obtains with respect to the corporate defendant, and it is received in evidence as against the corporate defendant, Daisart Sportswear, Inc.

The question of amnesty or immunity then remains to be decided by the Court. As to the corporate defendant, Daisart Sportswear, Inc., no immunity or amnesty was obtained by the examina-

tion of one of its officers and the motion for directed judgment of acquittal is therefore denied. 2551

It is clear that an officer of a corporation may be examined as to his knowledge of the whereabouts of books, records and documents of the corporation and may be compelled to produce them if they are in his possession, and may be interrogated concerning their whereabouts if they are not produced. In determining whether or not amnesty was granted the defendant, George Smith, by his interrogation under subpoena by the OPA official, the Court feels that the test to be applied is, "Does the testimony fall short of proving the crime in its entirety, proving 2552 some part or feature of it, and will it tend to a conviction when combined with proof of other circumstances which others may supply?"

In my opinion, the testimony does not prove any part or feature of the commission of a crime, nor will it tend to a conviction when combined with proof of other circumstances which others may supply.

The motion therefore, for a directed judgment of acquittal as to the defendant, George Smith, is denied, with exceptions, of course, to the counsel for 2553 both Daisart Sportswear, Inc. and George Smith.

Mr. Hart: Might I just put on the record the formal basis of my motion? It will take a very short time.

The Court: Yes, if you have not already done so. I thought that you did it the other day at length, but if you feel that you should state it in any greater detail at this time, you may do so.

Mr. Hart: Yes, I believe that most of my argu-
2554 ment on this particular point was in the absence of the Reporter and therefore is not on the record.

The Court: The argument as to the ruling was, but I think you did state your objection before the Reporter, but you may make any statement now that you feel that you should to protect the interests of your client.

Mr. Hart: I should like to state that my motion for a judgment of acquittal on behalf of the defendant George Smith was predicated upon the test just enunciated by your Honor. It is my contention
2555 that the testimony elicited and the questions asked before the OPA Examiner were such as if not to establish the commission of the crime by George Smith, but to establish acts which were necessary as a basis of the charges contained in both the indictment and the informations.

The defendant George Smith was questioned concerning whether or not Daisart had applied or extended priorities. That is the basis and gravamen of Information C-125-239, the extension of those very priorities concerning which he was questioned.

2556 In answer to the question by the OPA Examiner, he did affirmatively state that Daisart did apply and extend those priorities. He was further questioned as to whether or not he used those goods for the purpose for which they were received or whether or not he sold or disposed of those goods. He answered that he did use some of the goods for the manufacture of canvas bags and others he sold.

In fact, one question asked was: "Does that ac-

count for the large majority of the material which was not used for bags?" And he answered, "Yes." 2557

That is specifically the very facts which the United States Attorney must prove in order to establish the allegations under the information which charges him with failing to utilize these goods for the purpose specified.

Now, those are the acts, and they come within Judge Cardozo's decision—he is charged, One, with failing to use goods for the purpose intended, and, Secondly, applying the priorities to obtain those goods.

The answers may not prove the crime itself, but 2558
they come pretty close to proving the crime itself because all he is charged with is using priorities unlawfully and disposing of the goods unlawfully, and it certainly does come within the purview of the test outlined by Judge Cardozo and just enunciated by your Honor.

As to the conspiracy end of it, the conspiracy is predicated upon the facts that he conspired to do the acts set forth in the two informations, and in view of the fact that he was questioned concerning those acts, it is my contention, on behalf of George 2559
Smith, that he has immunity, and if the motion does not already appear in the record, I move that there be a judgment directed of acquittal on behalf of the defendant George Smith.

The Court: Your motion is denied.

Mr. Hart: Exception.

The Court: I should rule further with reference to one answer given by the defendant George

Smith on page 18 of the exhibit, the third answer
2560 on the photostatic copy that I have of Exhibit 147, beginning with the words "It was not," and ending with the words, "And to dispose of it."

In response to a question which the witness George Smith was asked, as follows:

"This is a voluntary statement. You do not claim immunity with respect to that statement?"

And the answer purported to have been given by him is, "No." That one answer will be received in
2561 evidence as to the defendant George Smith.

Mr. Hart: May I be heard on that, your Honor?

The Court: Yes.

Mr. Hart: Your Honor will note that previous to that particular question and answer the defendant George Smith did claim privilege as to any questions which thereafter might be asked of him. He further gave this answer: he was asked by the Examiner: "Do you claim immunity with respect to that answer?" and his answer was: "No."

Now, while your Honor might have a basis for
2562 ruling that with respect to that answer he does not have immunity, he still has privilege, and it certainly cannot be received as evidence. He was not asked whether he waived privilege; he was asked whether he waived immunity.

The Court: That was referred to as a voluntary statement.

Mr. Hart: That is the statement of the Examiner.

The Court: That was the statement of the Exam-

iner and I will resolve that question in favor of the defendant George Smith, and I will exclude the entire statement as to the defendant George Smith, including that one answer. I will admit it, of course, as to the defendant Daisart Sportswear, Inc. 2563

Mr. Hart: So that there will be no misunderstanding, for the record, this statement, then, is part of the record in this case?

The Court: As to the defendant Daisart Sportswear, Inc.

Mr. Hart: And it is part of the record for the purpose of deciding the question as to whether or not amnesty or immunity was granted to George Smith? 2564

The Court: Yes, the entire proceeding has been marked as an exhibit for identification, No. 147, so that if there should be an occasion to have it reviewed by any appellate court, the entire statement will appear before them in Exhibit 147 for identification.

Mr. Hart: That is what I had in mind.

The Court: Yes.

Mr. Hart: May I do this, and I do it most respectfully. 2565

The Court: Yes.

Mr. Hart: May I now respectfully move for a mistrial upon the ground that this exhibit, which was obtained under the circumstances outlined by your Honor, has already been read to the jury and emphasized by the United States Attorney in the course of his reading, and together with the other exhibits which have been read and received in evidence and

then withdrawn from evidence, places the jury in a
2566 position where as human beings, even though your Honor instructs them to disregard it, they are going to have the greatest of difficulty, to say the least, in separating the wheat from the chaff, in separating the exhibits that are in evidence and the exhibits that have been in evidence and have been excluded.

This exhibit is an exhibit obtained in violation of Amendment 5 of the United States Constitution. It is a privileged document, and the mere reading of it to the jury, in my opinion, even though it is subsequently excluded by your Honor, places the defen-
2567 dant in a position where it has been read to the jury, a document which was privileged—

The Court: I have ruled. The Court ruled that it is not privileged as to the defendant Daisart Sportswear, Inc. and that it is admissible in evidence against that corporate defendant. Having been admitted in evidence as against one defendant, it may be read properly to the jury.

The Court will instruct the jury concerning its ruling on the admissibility of the various exhibits and evidence. Such things may arise in a case of this-
2568 nature where there have been about 150 exhibits and 40 odd counts in each information.

Your motion is denied.

Mr. Hart: Exception.

The Court: Suppose we bring in the jury and you will sum up. I think your client's rights are protected by your objection, Mr. Hart.

Before you sum up, I will instruct the jury concerning this exhibit, concerning the ruling which I

have made in their absence. I will say nothing about your claim of immunity. As I understand it, you do not want that to appear before the jury, is that correct, Mr. Hart? 2569

Mr. Hart: That is correct.

(Jury in box.)

The Court: We were delayed in the commencement of the trial because there were certain matters which were argued on Wednesday afternoon in Chambers and then again was continued this morning, on matters of law which, of course, did not concern the jury and therefore they took place in the absence of the jury. 2570

There was offered in evidence during the course of the trial one exhibit which was called Government's Exhibit 147-A in evidence. You may recall that that was the transcript of the testimony or a statement alleged to have been given by the defendant George Smith before an OPA official on April 30, 1946.

At the time that exhibit was offered in evidence, the Court excluded it as to the defendant Albert J. Deeb. The Court also now excludes it as to the defendant George Smith, and you will not in your consideration of the guilt or innocence of these defendants, Albert J. Deeb or George Smith, consider or take into consideration in any manner that exhibit, 147-A. 2571

It may, however, be consulted by you, if you see fit, in determining the guilt or innocence of the one corporate defendant, Daisart Sportswear, Inc., but for no other purpose.

Defendants' Summation for Daisart Sportswear and George Smith

2572 We will now have the summation of counsel and then we will try to charge this afternoon.

Take your time, Mr. Hart, and do not be rushed.

Mr. Hart: I will try not to test the patience of the Court or the jury.

The Court: You will not test my patience nor that of the jury. This has been a long case, and it has many exhibits. You take your time.

Mr. Hart: Thank you, your Honor.

DEFENDANTS' SUMMATION FOR DAISART SPORTSWEAR AND GEORGE SMITH.

2573 Mr. Hart: May it please your Honor, Mr. Foreman, and Ladies and Gentlemen of the Jury: Before the recess, over the Thanksgiving holiday, Mr. Siegel on behalf of the defendant Deeb addressed you and expressed his wishes for a Happy Thanksgiving; and expressed his thanks for the opportunity that was afforded an attorney for a defendant in a court of law to speak on behalf of his client.

2574 In these United States of America, one of the few remaining countries on the face of God's earth, a trial is possible where a defendant may be brought into court and not summarily convicted, deprived of the right of counsel, denied the right of witnesses to confront him, but a trial is afforded every defendant who is accused of a crime to come into court before a fair and impartial judge, to be prosecuted by a fair and impartial assistant United States attorney, and be tried before a fair and impartial group of

jurors, male and female, who come from everyday walks of life. 2575

And at the outset of this summation I desire to express to your Honor my sincere appreciation for the courtesy, for the indulgence, for the patience which has characterized your conduct throughout the course of this trial.

I desire likewise to extend my sincere appreciation to Mr. Rudykoff, who has acted in this case as a zealous prosecutor and not as a prosecutor.

I ask you ladies and gentlemen of the jury to accept my sincere appreciation for the attentiveness 2576
and the devotion to your duties as jurors which you have displayed throughout the course of this trial.

There may have been times in the course of this trial when motions were made by counsel and were decided by the Court in which there was some heat or animation, and you will notice that counsel was not placed in a concentration camp because, after all, this is the United States of America.

These defendants sit before you, ladies and gentlemen of the jury, charged with a crime. I know that there is no one on this jury who took the viewpoint 2577
when he took his seat as a juror, that he took one look at the defendants or either of them, and said, "I know by looking at them that they are guilty." Some people form judgments of that kind concerning people in everyday walks of life. They think they can determine the characteristics or the character of an individual by looking at them and tell whether they are honest or dishonest. But I know that in

2578 courts of law, where men and women are taken away from their everyday pursuits and making the sacrifice of becoming jurors, consider their duty far too seriously to do that.

It reminds me of the time when a juror said to the judge, "I can't serve, judge." The judge asked him why not. He said, "I have taken a look at the defendant and I know he is guilty." The judge said, "Stop that. That is the district attorney you are pointing at."

2579 You don't look at defendants in courtrooms and say that they are guilty. If we had to get by by our looks some of us probably wouldn't have a very happy existence.

At the outset of this trial the United States Attorney raised in his hands certain papers that these defendants have been indicted, and an information or informations have been filed against these defendants. His Honor will charge you that the mere filing of an information or the mere handing down of an indictment is not to be considered by you as evidence in this case; that when this defendant comes into

2580 court on the day that he is arraigned and says "I am not guilty," his Honor will charge you that there arises in his behalf a presumption of innocence—that the defendants and each of them are presumed to be innocent, and that presumption remains with them throughout this trial, and it is with them now as I am talking with you, and I believe his Honor will so charge you.

I believe his Honor will further charge you that 2581
these indictments and informations are no evidence of guilt and the presumption of innocence lasts even after he charges you—even after you go into the jury room, and that presumption of innocence obtains until the time comes, if it ever does come, that you are satisfied beyond a reasonable doubt that Mr. Rudykoff acting on behalf of the plaintiff in this case, has established the guilt of the defendants beyond a reasonable doubt.

Now I ask you ladies and gentlemen at the outset, 2582
and I ask this based upon my experience at the bar for over thirty years, during part of which time I served as an assistant district attorney in the same capacity as Mr. Rudykoff—I ask you, and I ask you most sincerely, not to compromise your verdict. I know it has been a long trial. I know if you took all of the papers that were introduced in evidence and you took them out of their folders and placed them on top of these defendants and counsel for the defendants, the volume of the papers could cover these defendants and bury them; but I ask you not to bury these defendants because of the fact that a lot of 2583
papers have been introduced in evidence, unless you are satisfied from those papers that the defendants' guilt has been established beyond a reasonable doubt.

I ask you also that because of the fact that the assistant United States attorney has seen fit to put in one information forty-one counts, and in another information forty-one counts, and in the indictment still another count, not to go into the jury room and

2584 listen to one another and then say "Well, I'll tell you, we don't think that Mr. Rudykoff or the United States has made out a case," and someone may say "Well, I think maybe they have," and then you reach the stage where somebody in the juryroom says "Well, I'll tell you what we do, we will compromise. We will find them guilty on one count or two counts." I ask you not to do that because whether you find this defendant whom I represent guilty of one count or two counts, or any of the defendants guilty on one count or two counts, when you have a reasonable 2585 doubt in your mind as to their guilt on any count, then you are not doing your duty as jurors.

If you do that simply because of a desire to compromise, a desire to get home early, a desire to please some of the other jurors, then I say that you are not fulfilling your oath as a juror.

I asked you and you and you and every juror in this box at the time you were selected, if you have a reasonable doubt in your mind as to the guilt of these defendants, will you vote not guilty as long as that reasonable doubt exists? And each one of you 2586 ladies and gentlemen in this box said that as long as there is a reasonable doubt in your mind as to the guilt of the defendants you will vote not guilty.

Discuss this evidence with the other jurors. His Honor will tell you it is your duty to do that. And you will reason with them and try to show them that there is a reasonable doubt or they will show you that there isn't a reasonable doubt. But if after all the argument you have a reasonable doubt in your mind as to the guilt of the defendant then his Honor, I

believe, will charge you that under no circumstances 2587
are you to compromise and say "Well, we will find them guilty on one count or two counts, and maybe the judge will be lenient. We have nothing to do with the punishment. That rests with the court."

I warned you against another thing—if I may use the word "warn". Sometimes in the course of deliberations a juror will say "I have a reasonable doubt. I believe the defendants are not guilty," and the other jurors will say, "I will tell you what we will do. We will find him guilty on one count or 2588
two counts and recommend mercy." This defendant does not want mercy. He wants justice. If there is a reasonable doubt in your mind, ladies and gentlemen, don't qualify your verdict and don't compromise your verdict upon the theory that if you put the words "recommendation of mercy," the judge might be lenient with the defendant.

I ask you to consider this evidence, and if there is a reasonable doubt stick to your verdict of not guilty.

Now ladies and gentlemen at this time of course 2589
it is my duty to summarize the evidence. I am not endowed with supernatural powers. I have had experience in the trial of cases in the thirty years that I have been in practice, both on the side of the prosecution and on the side of the defendant, and I have had experience in the trial of cases in the civil courts. I make a confession to you: this is the first case I have tried in this court in the thirty years that I have been in practice. It is not often that one is confronted with

2590 a situation such as confronts me at the present time.

It is not often that one who is supposed to stand up before a jury and think back over the record and try to recall and remember the many facts and complications involved in this particular case. It is not often that one is called upon to summarize the testimony of fifty or sixty witnesses, whose testimony was taken over a period of approximately two weeks. But in the course of the trial I have made notes. I have made mental notes as well as written notes. And I have claimed by recollection to some extent
2591 and I am able to recall the facts.

My position here now at this particular time is the same as though I were there in the juryroom with you reviewing the facts in the case. I am what might be called the fifteenth juror because there are twelve jurors and two alternates. I am talking the facts over with you the way you would be talking them over in the juryroom.

After I have concluded Mr. Rudykoff will talk over his recollection of the facts and try to tell you what inferences he draws from them. I am going to
2592 give you an outline of the facts as I recall them and I am going to draw inferences from them which I think are justifiable inferences, and inferences which should be drawn by you when you are in the juryroom.

Of course at the outset we have got to determine what these defendants are charged with, and we may

as well bear in mind that there are two informations and one indictment. 2593

The first information charges that the defendants wilfully, unlawfully and knowingly applied and extended or aided and abetted in the application and extension of the preference rating hereinafter set forth, which preference rating said defendants were not entitled to apply or extend.

Those words "apply and extend," and all those things have a very, very narrow meaning under the law. In other words, what they say is this, to use common and understandable English language: that the defendants used a preference rating which they had no right to use. That in sum and substance is what this indictment or information says. 2594

Of course, if they put it in plain ordinary language then they wouldn't show their training and skill as attorneys. The same as a doctor who wants to order cough drops for a patient and he puts down some Latin so that it will appear that he is profound in his knowledge.

But what this defendant or these defendants are charged with in this information is using a preference rating which they were not entitled to. 2595

Let's see whether or not that has been established. I say established. Let's see whether it has been established at all or whether the contrary has been established. What do they do in order to establish that this defendant was not entitled to use that preference rating. They produce witnesses who establish that they were entitled to use the preference rating.

2596 Now let's see if that isn't so. The first witness called by Mr. Rudykoff was a fellow by the name of Rosenquist. He testified that he was employed by the Metals Disintegrating Company, a company which was manufacturing powder for the United States Government. He testified that he produced here all of the records that he found in the Elizabeth plant of the Metals Disintegrating Company—and I want you to remember that part of it.

Then they called Mr. Forrest, who testified that he
2597 is the purchasing agent for the Metals Disintegrating Company, and he testified also that they were manufacturing bags or manufacturing powder for the United States Government and that it was necessary to get bags or screens or material for those bags or screens, and that he couldn't get it, and his concern couldn't get it, and so he went to Smith, who was an officer of the Daisart Sportswear, which in peace time made sportswear, and in the turmoil of the war wound up making ammunition bags, leggings for the Navy, dresses for lend lease and other things.

And he went to Smith and said to Smith, "Here,
2598 we can't get material for bags and we can't get bags. Can you help us out? Can you manufacture bags and can you get the material for it?" And Smith said to him, "Well, I can get it if I can get the priorities for it."

That is the testimony of Mr. Forrest. So there was sent to Smith the numbers of the contracts and the priorities which were granted to Metals Disinte-

grating Company. I don't know what exhibit this 2599
is, Mr. Rudykoff, but I am referring now to the letter of March 2, 1945, signed by the Metals Disintegrating—

Mr. Rudykoff: Exhibit 8.

Mr. Hart: Exhibit 8, signed by Metals Disintegrating Company, dated March 2, 1945, signed by A. W. Forrest, Purchasing Agent, of that corporation.

Now this exhibit reads as follows:

"In reply to your recent request for contract numbers to cover materials furnished to us, please be 2600
advised that herewith is a partial list"—and then they go on to set out the priorities AA-1, AA-2-X, AA-1 allotment number J-5, and various other numbers. And at the bottom, "For your information the first item consumed the principal part of materials supplied by you."

This letter is dated March 2, 1945. It appears that Smith had been supplying materials to them prior to that date, which were used for the first item, preference rating certificate No. T-A-42659—Contracts NORD-3903, NORD-8074, which are the bags 2601
and screens and other things that were manufactured by Smith and by Daisart.

So there is the priority. There is the priority that was extended by the Metals Distributing Company to Smith. So the charge that they unlawfully used the priority certainly is not borne out by the evidence. As a matter of fact, the direct testimony is

2602 that they had the right to use this priority to obtain this merchandise.

In addition to that, there is another information, and that charges the defendants. It is one of those, if any of you have played the races—it is one of those "if money" things in reverse: if we don't get them on the first information, and it appears on the trial by our own testimony that they did have the right to use the priorities then we will confuse the jury further and we will slip in another one, and the other one is this.

2603 Well, they say, all right, all right. There is the authority in writing. There is the testimony of Forrest who said to Smith to use the priority given to us by the Government to get goods.

So they come in and say, "Well, all right, maybe we can't fool the jury on this one. Here is what we will do. We will put another information in. We will say, all right, they did have a right to the priorities, but when they obtained the goods they failed to utilize the goods for a purpose prescribed for goods received."

2604 That is the second information. Now, if they had no right to a priority, then they certainly had no right to obtain goods. If they had a priority and had a right to the priority and a right to use the priority, certainly then the charge that they failed to use the goods received for the use prescribed must be established by the Government beyond a reasonable doubt.

Let's see what they did. They called Mr. Forrest 2605
after Rosenquist got here, and you remember Rosenquist. He got these from the files in Elizabeth.

Then I asked Mr. Forrest, where are your orders?

Well, the orders are there.

Now, Mr. Forrest, let me ask you this: you were manufacturing ammunition for the United States Government—I believe it was for the Navy— and there were some times when the fortunes and vicissitudes of war prompted certain actions and certain other actions.

And I gave as examples the invasion of Normandy, 2606
and everybody thought the war would soon be over. And then the Battle of the Bulge and then everybody thought it would be a long war. Then Patton came along and then everybody thought it would be a short one. And then the invasion of various islands in Japan—and you ladies and gentlemen have a right to discuss those things in the juryroom, because matters of common knowledge need not be proven. You may apply matters of common knowledge to your reason in this particular case.

But Mr. Forrest admitted that after the invasion of 2607
Normandy the orders lagged. The Government wasn't in such a hurry for the bags. Before the invasion of Normandy it was rush, rush, rush. Sometimes he would send an order to Smith. Sometimes he would telephone:

The Government wants these bags in a rush. You've got to get the material.

2608 And then after the Battle of Normandy—no orders. Then the Battle of the Bulge—rush, rush, rush—and Smith was supposed to have materials on hand at all times to fill these orders.

And Forrest testified that the reason why they hired Daisart to manufacture these bags was because they couldn't get the goods. And Forrest says, we had to be satisfied to take any kind of material we could get because of the shortage of material.

And, Mr. Forrest, now, when you telephoned your
2609 orders in, Smith would fill these orders without a written order. Why are you only bringing the written orders to court? Why don't you bring the complete records?

Did you tell them to ship to Verona as well as to Elizabeth?

Yes.

Have you got your records from Verona?

Well, I don't know.

Did you tell them to ship to St. Louis?

Yes.

Did you have a train held up on numerous occa-
2610 sions so that the bags could come from Daisart and shipped down there?

And Noel said, I recall that. I recall that bags were manufactured at St. Louis and bags were shipped to St. Louis.

Have you got the records of those?

No, I don't have the records of those because I didn't bring them and I don't know.

But, in addition to that, Forrest testified that he 2611
wasn't the only person but they had a fellow by the name of Hall.

I said, what was his job?

And then between us we agreed to promote Hall to the position of assistant purchasing agent. Hall was at Verona. He was ordering goods from Verona. We don't know who was ordering it from St. Louis, but there were three places, and they bring in the records from one place, and the United States Attorney says, Look, here are all the records we got—a certain 2612
number of bags appearing only on the written orders. You can't find anything except orders on those written orders. But you can remember the testimony that there were other bags delivered.

I said to Forrest, Did you ever get piecegoods from Smith?

Oh, no, we never got any piecegoods.

You never got any piecegoods not made up?

No, we didn't.

Then I picked up the exhibits and, luckily, in looking through the exhibits I found that piecegoods had been billed to Elizabeth, New Jersey, where they 2613
don't manufacture bags.

And then I said to him, Who else manufactures bags?

Well, we manufacture them in Verona. We had a woman contractor there manufacturing in Verona.

Did she get piecegoods from Smith?

Why, yes, I believe she did.

2614 Did piecegoods go to St. Louis?

Why, I wouldn't know. I wouldn't have any knowledge of that.

You can't convict this defendant on what Forrest doesn't know. You can't convict the defendants on what they don't produce. You can't convict the defendants on what they do produce unless they produce the complete and full records of the Metals Disintegrating Company, and I will come to that a little later.

2615 Forrest testified that he never knew how many bags were needed in advance, but it was Smith's duty to have on hand at all times material for the manufacture of these bags.

He testified that these orders would come in, and to use his own words, they were rush, rush orders from the Government, and then there were rush, rush orders given to Daisart.

He said that he had difficulty in obtaining material.

The testimony shows here that it took three months' delivery after you gave the order to get the material.

2616 Now, I want to ask you this question: Here is a guy, to use the vernacular—who is in this business of making sportswear, the Daisart Sportswear Company. Along comes the war and the Government says to him, stop making Sportswear. You've got to get into the business—you've got to manufacture leggings for the Navy, you've got to manufacture pea-jackets for the Navy, you've got to manufacture kits for the Army, you've got to manufacture Lend-Lease dresses and overalls and other things for the

UNNRA, and then you've got to manufacture bags 2617
for the Metals Disintegrating Company, and you've got to have the material on hand when it is ordered, because when the Navy says rush, rush, you've got to have the stuff there. We don't care whether it takes three months' delivery or not. Here are your priorities. Go out and get that merchandise.

And there isn't a single bit of testimony in this case that Smith didn't deliver every bag that was ordered of him. There isn't a single bit of testimony in this case that Smith and Daisart didn't deliver 2618
every Navy pea jacket that was ordered of Daisart. There isn't a single bit of evidence in this case that Smith didn't deliver every legging or pair of leggings or every Lend-Lease dress or overalls that were ordered of him.

He had to have the merchandise on hand. Well, how do you get the merchandise? There were brokers around town, men standing on street corners. And you can see it today in the twenties and thirties over on the west side of Manhattan, those of you who live in the City of New York—people standing on corners, looking around for piecegoods, and they were looking 2619
around for piecegoods then, trying to buy piecegoods. And you had to get it. Metals Disintegrating couldn't get it. Smith couldn't get it. He had to send brokers around to look for the merchandise. And then what happened? A story is unfolded here of the American way of life, an American drama, and after you get through listening to this story you will say, Why is

2620 Smith here? Why is Daisart here? Why aren't the officials of Meadtex here? Why aren't the officials of Steinam here? Why aren't these fellows who profiteered in the mills, who wouldn't sell gray goods but insisted upon finishing the goods and dyeing the goods, put on the witness stand?

They said, Well, we wanted to get every bit we could. If we sold gray goods we couldn't get much profit. If we sold finished goods we could get a profit. If we dyed it we would get a little more profit.

2621 We insisted on finishing the goods and getting a profit on that. And, of course, the lighter colors were cheaper.

Questions were asked by the United States Attorney and even by his Honor, and I would have asked those questions myself, as to why Smith didn't order gray goods, unfinished goods, for the purposes which were prescribed. The answer to the question why he didn't order them came from the mouths of the mill owners and the converters in this case.

Why didn't he buy gray goods? They wouldn't sell it to him.

2622 They said, We wanted to get ours. We wanted to finish them. We wanted to dye them.

Why couldn't you get a white shirt or white undershirts throughout this period? Because under the OPA white shirts didn't yield as big a profit, and these people made striped shirts and striped underwear so they could add on the cost of dyeing and other things. And there is unfolded a situation that we went through throughout those years.

But let us adhere to the evidence as we go along and to the facts as they came out. 2623

Is Smith a bum? Is he a loafer? Is he a fellow who just went out and bought piecegoods and then simply sold it in the open market? Did he do anything wrong?

The testimony here, and it is the Government's witnesses who were called, is to the effect that this man had 50 or 60 operators working for a period of two years in his plant; that his payroll was approximately $2500 a week; that he was turning out stuff not only for the Army but for the Navy and Lend, Lease and UNNRA. 2624

Is there any proof here as to the amount of material that was used in the linings of the jackets that were manufactured by Smith for the Navy? Is there any testimony here as to the yardage that went into the dresses that Smith manufactured for the UNNRA? Is there any testimony here as to the amount of the material that went into the kits that were manufactured for the United States Army by Smith?

I know that on some of these orders it says "end use", "end use, ammunition bags". On others it didn't specify an end use. And the law says, and I believe his Honor will tell you, and I only refer to the law not for the purpose of telling you what the law is but for the purpose of basing what I believe his Honor will charge you—and if I missfate the law to you or missfate what I think his Honor will charge to you, I know that Mr. Rudykoff will object and his 2625

2626 Honor will object, so I am going to state to you what I believe his Honor will charge you, that if Smith obtained this merchandise prescribing an end use for ammunition bags, it was his duty to use these goods for ammunition bags—if it was possible, if he had the orders for them.

If it was possible to use them for ammunition bags it was his duty to use them for ammunition bags. But if he couldn't use them for ammunition bags, he was permitted to use them for any other material for which the same rating was required, or a higher rating 2627 was required.

In other words, if he obtained this merchandise under an AA-1 priority or an AA-2-X priority he had to use it for ammunition bags or something else that required an AA-1 or AA-2-X priority.

The United States Attorney has submitted a memorandum to the Court pointing out his view of the law, and I believe the Court will charge you that under the Second War Powers Act any material or any orders placed pursuant to the authority of this paragraph for a naval contract or for deliveries of mate- 2628 rials under Army contracts, shall in the discretion of the President take priority over all deliveries for private account or for export.

So that the manufacture of pea jackets for the Navy had the highest priority. It was a contract for the Navy. The manufacturer of leggings for the Navy had the highest priority because it was for the Navy. The manufacturer of Army tool kits had the highest priority because the Army was specified, as well as

the Navy, in the Second War Powers Act, in the particular section graciously handed to me by the United States Attorney in his trial brief in this case, and I believe his Honor will so charge you. 2629

Now, if Smith had the right to use this merchandise for any purpose that had the same priority, and if the manufacturer of coats, leggings and Army tool kits had the same priority or the same preference rating as ammunition bags, or even a higher preference rating, where is the proof as to how much material Smith used in the manufacture of the tool kits, the Navy pea jackets; the leggings and the various other materials? 2630

Where is the proof as to the total yardage consumed in all of his contracts with the Army and the Navy? Where is the proof that this Daisart Sportswear, this fellow who was making sportswear before he got into this mess with the Government and they asked him to do this and do that, and like a patriotic citizen whose duty it was to respond to the call of the Government—as a matter of fact, I can't say patriotic, he had no alternative. Sportswear companies were manufacturing ammunition bags and leggings. Sewing machine companies were manufacturing machine goods. Everything was converted into a wartime use. And this defendant was there. 2631

Where is the testimony as to what material went into them?

When the first preference rating was extended to the defendant, they said, We have already consumed the principal part of material supplied by you. If

2632 Smith had in his possession material prior to the time that he manufactured these bags or entered into the contract for the manufacture of these bags, which is set forth in that letter, and he used his own material which had been obtained without priority for the manufacture of bags or clothing, he had the right, I believe his Honor will charge you under the law, to replace that material even by using the priority, because it would be unfair to a man who has a stock of goods and who uses those goods for a purpose for
2633 which he could have obtained a priority, who says, Well, I won't wait until I get the goods for two or three months, I will use the goods I have on hand, and then later on I will replenish my stock out of the goods that I purchase under a priority.

I believe his Honor will charge you that that is permissible under the law, because the Government would not work out an injustice.

Now it is disheartening to sit and try a case because, as you know, after all, the jurors are human beings and they are affected sometimes by the figures in forming their judgment. But I have an abiding
2634 faith in the jury system, and that abiding faith is something that I acquired after an experience which has involved more than half the years I spent on earth.

The United States Attorney asked questions and the Court asked questions, as the Court has a right to do to clarify and clear up any ambiguity or doubt that may exist with respect to the answers. The

Court asked the question, Well, did Smith ask for gray goods? 2635

Immediately I said to myself, Well, why didn't he get gray goods? Why didn't he order unfinished goods if it was for ammunition bags? Then in the course of the trial it developed that he couldn't get gray goods if he went down and grabbed these fellows by the throat, because they were interested in big profits.

They said, We've got to finish it. We've got to dye it.

Well, I don't need dyed goods. 2636

Well, you've got to take it. If you want it dyed black or a dark color you've got to pay more.

So when the United States Attorney was saying to one of the witnesses, Did you see any red goods, or did Smith order brown or pink goods, or did Smith order some other bright colored goods, and the fellow says Yes, then I turned to my client to look at him askance.

And then I said to the witness, could he get any other goods? And he said No. And Metals Disintegrating said, We've got to take whatever we could get. 2637

There is no proof what the color of the dresses he sent to Europe was, the Lend-Lease dresses. There is no proof here as to the color of the linings or the Navy pea jackets. There is no proof here as to the color of the bags here that were manufactured for the Army. But we were living in very, very peculiar

2638 times. Smith took what was available for the various uses which he had to make of these goods.

Now, look, ladies and gentlemen, this case is entitled "The United States of America v. George Smith and Daisart Sportswear." In the State Courts it is "The People of the State of New York v. So-and-So." It doesn't mean that the United States of America is against George Smith, any more than in the State Courts does it mean that the people of the State of New York are against the defendant. In the State Courts it is "The People" and in this court 2639 it is "The United States." Smith and Deeb are one of the people of the United States. It is simply a title, "United States v. George Smith", but the Government prosecutes this case through the United States Attorney. Every agency of this Government is at his disposal.

More than two years ago the final transaction set forth in these informations was consummated. Almost two years ago these informations were filed in this case—

Mr. Rudykoff: That happens to be not so.

2640 The Court: Try not to interrupt.

Mr. Hart: Let us have the date, if your Honor please.

The Court: I think you are in error.

Mr. Hart: May I have the date?

The Court: It appears on the record.

Mr. Hart: May we have it? My copy does not have any date on it.

The Court: I think the informations were filed in March of this year. 2641

Mr. Hart: The informations, your Honor?

The Court: Yes, the informations.

Mr. Hart: Were filed when?

The Court: March of this year.

Mr. Hart: March of this year?

Mr. Rudykoff: And September was the indictment.

The Court: I do not like to interrupt summations, but the file shows that the informations were filed on March 31st of this year and the indictment 2642 was filed on September 23rd of this year.

Mr. Hart: Almost two years ago, ladies and gentlemen, the defendant was called into the OPA. Almost two years ago the OPA came to his place of business, Mr. Pindek and Mr. Berman. Almost two years ago Pindek, who describes himself as an attorney, came in. He wanted to see just what the state of affairs was. And he didn't check but he had a fellow by the name of Berman who was an accountant come in. You saw them both on the witness stand. That is one agency. They belonged to the WPB. You saw those fellows on the stand. 2643 One of them was a lawyer. The other was an accountant.

Far be it for me to speak ill of lawyers because after all lawyers have to live—some people say, Why?—because even the Government has to have lawyers.

2644 Now, ladies and gentlemen, I want to ask you this: There is the WPB. They go down there and the fellow says, very frankly, he saw certain things down there, and he knew from the records there that they were manufacturing leggings. He knew they were manufacturing pea jackets for the Navy. He knew they were manufacturing kits, and as he put it, overalls and Lend-Lease. He knew all those things. He knew that they were manufacturing bags for Metals Disintegrating.

2645 So he went through their books—he went through their checks, rather, and he went to the concerns and he found that the checks that were given by Smith corresponded to the records of these concerns. He didn't go to Metals Disintegrating to find out how many bags were delivered by Daisart. He didn't check up with the United States Navy, which, by the way, I assume Mr. Rudykoff will concede is also a part of the United States Government. He didn't go, and Mr. Rudykoff didn't go, to the United States Army, which is also a part of our Government, thank God, and find out how many kits were delivered to the Army, or to the UNNRA, which

2646 was a Government agency, and find out how much goods went into these dresses and other material that was shipped. No.

Two years go by. The matter is in the hands of the various agencies and it comes to the United States Attorney's office.

All right, we will assume that the information was handed down in May. We will assume that the

United States Attorney was working on it for six 2647
months or even a year before that, and if they weren't they were very derelict in their duties, if they thought something was wrong and not turn it over to the United States Attorney.

Nobody went to St. Louis to find out how many bags were delivered. Maybe St. Louis is too far for the WPB attorneys to go to, but Verona, New Jersey, isn't such a terrible trip. You can take the Hudson Tubes and get over there in an hour. It was not so far from the Daisart place. If he couldn't get the information that he wanted from 2648
the Daisart place, Metals Disintegrating isn't so terribly far away. It is in the State of New Jersey. They are part of the United States of America. They were our allies in the war. They were there and the concern was there and their books and records could have been checked. No check.

Well, maybe you can excuse the WPB. It was an agency just set up and they had to take inexperienced men who really didn't follow things through to their logical conclusion, but you can't convict this defendant or these defendants because of the failure of these people to go and bring the 2649
facts in. Maybe you can excuse them, but you can't excuse the FBI.

Now, I think his Honor will tell you that you can take notice of the fact that the FBI was in existence all of this time. You know, it is characteristic, from what I hear of the cases that are tried in the Federal Courts that when a witness is put on the stand

2650 by the United States Attorney, very quietly he will ask him the question: What is your occupation? What department are you connected with?

The Witness in a very low tone says: "Federal Bureau of Investigation."

And the jurors sit up. I sat up.

I have a wholesome respect for the Federal Bureau of Investigation and I think it is the most competent outfit on the face of God's earth. I think that their experiences and their investigations and their revelations and their efficiency is known throughout the world. But if there was anybody in this 2651 case, ladies and gentlemen, that could establish what amount of material went into the various products manufactured by Smith, the FBI could find it out like that. They are not inexperienced like the WPB or the OPA. They are real people who once they get out on a given trial they can certainly ascertain the facts.

So they produce a gentleman from the FBI, Mr. Cogan, for whom I have the highest respect.

May I have the works—I mean, the summaries?

2652 (Mr. Rudykoff hands papers to Mr. Hart.)

Mr. Hart: Mr. Rudykoff comes to the conclusion in the course of this trial, probably as I might have if I was still acting in the capacity of an assistant today: Well, maybe, maybe, this exhibits are a little confusing. Maybe they are confusing. That guy Forrest didn't stand up so well. He never told me about those oral orders. All he did was bring in the written orders, and he never heard about that St. Louis plant and the fact that bags were

shipped down there and to Verona, and he never knew that piecegoods was being sold to Metals Disintegrating by Smith so that they could manufacture bags in St. Louis, and the woman contractor could manufacture them in Verona. And he never knew a lot of other things about the thing. 2653

So I guess what I could do is this: I guess I've got to get up a master sheet and show this to the jury, and when they read this master sheet they will come to the conclusion after looking at so many pages that it must be something which points to the guilt of the defendant. 2654

Ladies and gentlemen, I will agree with Mr. Rudykoff, if you are going to decide this case on the amount of paper which is used and on the basis of this exhibit—I will admit that it is pretty heavy, even as I hold it in my hand, it is pretty voluminous.

Let's see what it is. Let's see what it amounts to. What is it?

Mr. Cogan took the stand—you will pardon me if I stand over here because I haven't room over there. He took the stand and he started to summarize what he thought these exhibits showed, and he started to summarize not only what he thought these exhibits showed but he started to summarize his recollection of Mr. Noel's testimony. 2655

I see as you sit there that one of you, at least one of you, is saying: Who is this fellow Noel? Noel is the fellow from the Metals Disintegrating Company, the second fellow. Some of you may not even

remember who Noel is, so Mr. Cogan from the FBI is going to summarize to you what he thinks the evidence shows. So he has a sheet here to read.

I am not an accountant, ladies and gentlemen. I am just a lawyer. I don't know anything about books or anything about mathematics, but I asked this question of Mr. Cogan:

On the first sheet, Mr. Cogan, you attempt to show a summary schedule and three supporting schedules showing the number of yards contained in the rectangular bags delivered by Smith to Metals Disintegrating. Where did you get that information from?

Well, I got it from the exhibits here and from the testimony of Mr. Noel.

Well, Mr. Cogan, did you also hear Mr. Forrest's testimony?

Yes.

Is there in this exhibit reflected any of the testimony of Mr. Forrest?

Well, no, there isn't.

Did you hear Mr. Forrest testify that in addition to these written orders the figures of which you used there were oral orders given by Metals Disintegrating?

Well, yes, I heard that.

Then in so far as these figures exclude the oral orders given by Metals Disintegrating they are inaccurate, is that correct?

Well, yes, that is so.

Did you hear Mr. Noel or Mr. Forrest testify that 2659
there was other merchandise delivered to St. Louis and delivered to Verona?

Yes.

Did you take into consideration in making up these tables which are going to be presented to the jury as your opinion of what the evidence shows, the amount of yard contained in the bags sent to St. Louis or sent to Verona?

Well, no, I didn't.

Then with respect to that this exhibit is inaccurate, is it not? 2660

Yes.

Well, I don't want to go through the lengthy cross examination that I indulged in as far as Mr. Cogan was concerned, but suffice it to say that after we got through discussing this particular exhibit it appeared that he made no effort whatsoever to put in here the number of yards that were used in the Lend-Lease material, the number of yards which were used in the lining of the Navy pea jackets, the number of yards which were used in the other articles manufactured, but he just took his summary. And then finally he winds up to show 2661
that there are so many yards missing and that Smith, if he received all of the money from the sales which are testified to by these witnesses, from various people; Smith should have made a profit of $261,737.55.

The testimony concerning that is so vague. It is vague because he frankly states that he didn't

2662 take into consideration any of the other factors which have been testified to in this case.

Of course, it is a nice thing to have jurors sit there and say, "Look at this fellow here Smith who made $260,000 and we have to work for a living", and so forth and so on. Why, that is a terrible thing. But when you have a witness who testifies that he bases it upon the testimony of one witness and doesn't take into consideration the testimony of another witness, and then gives his own conclusion based upon incomplete evidence as to what

2663 yardage was contained in various other articles, then certainly the jury should not be overcome with prejudice against Smith, because an accountant for the FBI draws up an exhibit in which he ignores vital factors and which leads to a result which had absolutely no basis or foundation here on the exhibits in the case or evidence in the case and which shows that the exhibits in the case are incomplete.

I want to show you something. I want to give you a typical illustration of what happened here. They come in with an information and they charge

2664 that Smith ordered 150,000 yards, 450,000 yards, and then one time they came in there with an order for one million yards of material. And the jurors gasped and they looked on the back of the information and they are charged with diverting one million yards. They are charged with diverting whatever we ordered. And then Mr. Cogan is on the stand and has prepared an exhibit.

Do you remember McLaren on the witness stand?

Of course some of you may. McLaren came from Meadtex. 2665

And I said to McLaren, I want you to look at this order and the invoice attached to it. I want you to tell me how many yards Smith ordered, and I want you to tell me how many Meadtex delivered.

And he said, Well, they ordered so many yards and we delivered that number of yards.

Did you get all of the material that Smith ordered from the mill?

Yes, I did, and we delivered it all.

That was the fellow who came back the following day who was supposed to tell us how much he got from the mill and what mill he purchased it from. 2666

And he came back the next day with some story: This doesn't correspond with that but we delivered it evidently.

Let's see, when Mr. Cogan was on the stand I said to him, Let's take Meadtex for instance—or Berger & Sherin, item 25 on this. It appears that Daisart ordered 150,000 yards. How many were delivered.

And he looked and he says, 101,000. 2667

Then we get down to the next item of Meadtex, or another item of Meadtex, item No. 27. Daisart ordered 100,000 yards. MevLaren says that Daisart got 100,000.

I said, Mr. Cogan, how many yards did Daisart get out of the 100,000? The answer was 12,980.

That isn't all. Let's go a little further. I said,

2668 Eisenberg, item No. 41, Daisart ordered 100,000 yards. How many did he get? 10,551.

Fine Goods Sales Associates, out of that order, that big order there, how many yards were short? How many yards were undelivered—his Honor corrected me when I used the word "short," I think very properly.

How many yards less than the order did Fine Goods deliver? Approximately 400,000 yards less than the amount that was ordered. But the information and the indictment charge that Smith 2669 diverted and wrongfully used all of the merchandise that was ordered by him, because the figures in the indictment—in the information, rather, are the figures of the amount ordered.

Let's take some of these other figures. Steinam Company, 50,000 yards ordered, 18,000 delivered. 100,000 yards ordered from Eisenberg, 10,500 delivered.

I asked the representative of the F. B. I. when he first started on this case, and I remind you that the F. B. I. was in existence, and Mr. Rudykoff's subsequent question: How long ago did I call you 2670 into this case to go over these figures? doesn't excuse the fact that the federal agencies, the United States Government, if you please, started their inquiries into this matter almost two years ago. The F. B. I. was in existence.

I ask Mr. Cogan whether or not he made any effort or the F. B. I. made any effort to trace the shortages, the 400,000 yard shortage, the 100,000

yard shortage in one case, the 90,000 yards short- 2671
age and the various other yards, and I believe he testified that the shortages or the amount delivered less than ordered was in excess of one million yards.

Did you make any effort? No.

Did you go up to Steinam & Company and examine their books?

I asked the W. P. B. attorney, did you go up there and examine their books? No.

So that you are allowed to steal in the millions and then come down here to court and be put on 2672
the witness stand and be shown as a self-sacrificing individual, to send a guy who was in the sportswear business and suddenly finds himself in this mess, to jail.

Why Smith? Why not McLaren? Why not Meadtex? Why not Steinam? Why not Berger & Sherin? Why not these other concerns who showed their greed and their avarice by saying, No, we didn't care whether a war was on or not. We knew that grey goods could be furnished quicker and cheaper, but we insisted upon colors, we insisted upon dyeing, we insisted upon profits.

2673

Where was the F. B. I.? Where were they when they discovered these shortages? They come in here and act as though Smith got these goods, and they come in here and say, Well, we will get him before a jury, and by comparison, of course, Smith may appear to be a small fellow, but we won't even worry about the big fellow, and maybe the attorney for the defendant will be so impressed when I put an accountant of the F. B. I. on the stand

2674 that he wouldn't even cross examine him about his figures.

Why do they have to put an accountant from the F. B. I. on the stand to draw up a chart of this kind? Is it so complicated, or is it simply to impress you with the fact that the F. B. I. is in this case and investigated it.

For the first time within my knowledge they reveal a state of affairs where the F. B. I. had certainly done nothing in the face of the diversion of material to the extent of over one million yards.

2675 Smith used this material, and the proof shows that he used this material or the greater part of it for the manufacture of leggings and other things for the Army and Navy. These bums and these thieves took that material. There is no accounting for it. They take the stand and lie. They deliberately lied upon the witness stand. I know that sometimes you ask questions of witnesses—you ask questions of witnesses where sometimes an answer is elicited—his Honor asked me to ask the witness a question in a manner in which his Honor wanted

2676 me to ask it because his Honor thought the question I asked was not proper.

I was asking the witness what became of the 100,000 yards or so that you didn't deliver. The witness's name was Biehl. Biehl, I believe, represented Berger & Sherin. It is hard to remember all these things, but Biehl represented Berger & Sherin. This is a typical illustration. There was an order placed with Berger & Sherin for 450,000

2677

yards. Do you remember how many yards they delivered? It's hard to remember. They were over 250,000 yards short. And Biehl was on the stand and I knew that they were short because I saw the invoices and saw the orders. So I said to Biehl, What did you do? What did you do with the shortage? What did you do with the 250,000 yards? And his Honor very promptly interrupted and said, Why don't you ask him whether or not he sold any of 2678
the goods in violation of law? And I said, No, your Honor, I won't ask that question that way because I don't think that is proper.

And then his Honor turned around, as he had the right to, and he said to Biehl, Did you sell any goods that were ordered by Daisart in violation of law?

Biehl hesitated a moment and looked at his Honor and said, Well, i, I can't answer that. Why can't he answer it? He knows whether it was sold in violation of law. All of these shortages that are unaccounted for—of course, I didn't like to ask 2679
the witness, Did you violate the law? The witness's answer would be, No. You have to cross examine a witness and ask him questions. You ask him, What became of them? And he is apt to give some phony explanation of it. But his Honor asked him the pointed question, and the answer came out, "I can't answer whether I did or not."

There is some evidence here that Smith did sell some goods. It is undisputed that he sold some goods. Smith had goods in his place as appears

2680 from this letter. Metals Disintegrating, when they first started with him, they wanted bags right away and he used his own material. He had the right to replace that material and he had the right to sell that material, because if the material which he originally used was obtained without a priority then he had the right to replenish his stock from materials from a priority and to sell that goods.

You had a deaf fellow by the name of Lazarus who took the witness stand. He was the fellow when I started to speak to him and I turned away 2681 he couldn't hear me. He really reads lips. And when I turned around to him he still didn't hear me. And I mention that not to be humorous but simply for the purpose of identifying the witness. And he said that he visited Smith's factory sometime, I believe, in October or November of 1945. It was after the war was over. His factory was closed. And at that time I think we agreed that on September 30th there was a change, the OPA had gone out of existence, and it is our contention that no priorities were necessary.

2682 Smith had this merchandise and he had no orders on hand for it. He had merchandise before the war and he used that merchandise without priorities and he did sell this to this fellow Lazarus.

Then you had another fellow to take the stand, and I think that Mr. Rudykoff will agree with me that this fellow was a liar and deliberately perjured himself on the witness stand. The fellow's name is Elson. He testified that he bought cer

2683

tain goods that had been consigned to Daisart, and he paid for those goods and they produced check to Daisart.

When I examined the invoice in that case, you will recall the invoice showed that those goods had been consigned to Daisart but they had been re routed by request of the shipper and sent to this fellow Elson. I believe he was in Boston. No, he wasn't in Boston. It was a little place—

2684

Defendant Smith: Cambridge.

Mr. Hart: Not being a Harvard graduate I forgot for the moment. He was in Cambridge. He is not to be entitled to any more credence because he comes from the refining atmosphere of the city of colleges. But he took that stand and testified that he ordered these goods from Smith, and then on cross examination it developed that he never saw or spoke to Smith until after the goods came into his place. They were originally consigned to Smith but rerouted to this guy Elson who Smith never knew or heard of until after the transaction was completed.

2685

Do you remember me, ladies and gentlemen, standing over here and turning around to this fellow Elson and saying to him, "Do you know Bert Julian?" and then he sat up there and said, "Bert Julian? Bert Julian?" "Yes, you know Bert Julian, don't you, the vice-president of Steinam?" "Oh, yes, yes, I know him."

Did he have to think as to whether or not he knew Bert Julian? Well, the answer came in the next

2686 question: "As a matter of fact, you know Bert Julian not only as a vice-president of Steinam but you know him socially, don't you?" "Well, yes, yes, I know him socially."

"As a matter of fact, he has visited your home in Boston, hasn't he, and you have visited him in New York? Well, yes."

You see, he had to hesitate to say whether he knew the fellow or not, and then suddenly he remembered that he knows the fellow socially so well that the fellow visited his home in Boston and he 2687 had visited the fellow in New York. Then I go on and I say, "Did you order this merchandise from Steinam originally? Well, I can't say positively. I don't think so. I know I spoke to Smith and so forth and so on."

What was done in that transaction was this: Steinam took it upon himself to send a part of Smith's goods to Daisart and then reroute it to his friend in Cambridge. Smith having already paid for that goods, when the goods were finally delivered to this guy Elson in Boston, where he had his place of 2688 business, and his residence was in Cambridge, he brought the check in to New York and he gave it to Julian. He says he doesn't remember whether he gave it. He can't say positively that he didn't deliver it to Julian. He can't recall, but then Julian had to reimburse Smith because of the fact that Smith did not get the goods, so he transmitted the check that was sent by Elson.

Was there anything crooked about that deal be-

tween Elson and Bert Julian? Well, I don't ask 2689
you to go on circumstantial evidence, although the United States Attorney is going to ask you to go on circumstantial evidence against my client, but I ask for the application of the use of common sense in determining whether there was anything crooked.

Not only did this fellow at first pretend that the name Bert Julian wasn't familiar to him, but then he started to say that he only knew him as vice-president of Steinam, and then he remembered that he saw the fellow at his home and the fellow would visit him socially. But you remember my turning 2690
around and saying to him, "Why, you talked to Bert Julian over the phone within the last two weeks!" I picked up a paper and held it in my hand, and, so help me, all that was on that paper was scribbling. The F. B. I. isn't on my side. I can't tap wires to see what is going on.

He said, "Yes, yes, I spoke to him." "Did you speak to him about this matter? Yes. "You told him that Mr. Rudykoff had sent for you? Yes.

"And when you came out of Mr. Rudykoff's office you called him up, didn't you, and you spoke to him? 2691
Oh, no, I went up to see him.

"Then you came down before the grand jury, didn't you, a short time ago? Yes.

"Did you phone to Julian the day you went down to the grand jury? Well, let's see, I was supposed to come down on a Friday and then I called Mr. Rudykoff and I couldn't do it, and then he said to come down on the 11th, and then I had called Mr.

2692 back because the 11th was Armistice Day. So then it was put over until the 12th, and then I phoned Julian.

"Did you phone him after you came out of the grand jury? Yes, I phoned him but I couldn't get him on the wire.

"What happened then? He called you in Boston, didn't he? Yes, he called me in Boston.

Why? Why was Julian so interested in what Mr. Rudykoff was going to ask? Why didn't this fellow tell Mr. Rudykoff that Julian, of Steinam Company,
2693 which had sold those goods, which we are charged with diverting, had forwarded those goods to him, why didn't he tell Mr. Rudykoff, "I've got to hurry out of here because my friend Julian is waiting in his office and I promised to call him up on the telephone. He is very much worried about what is happening down here."

He didn't tell that to Mr. Rudykoff. If he had told Mr. Rudykoff that, maybe Bert Julian, maybe Steinam, maybe they would be here as defendants in this case. But the guy was in such a hurry to find
2694 out what happened in the grand jury in this proceeding, Julian was, that he called this fellow up in Boston as soon as the fellow got back.

Where is Julian? Where is Steinam? Where is Fine Goods? Where is Meadtex? McLaren? Where are these fellows who took these orders?

And, you know, ladies and gentlemen, they couldn't get material from the mills unless they had a priority. They had to have a priority. So when Smith handed in the priority, and handed in his priority

to place the orders for two or three months de- 2695
livery, so that he would have enough material on hand, these people in some cases would get a certain amount of free goods from the mills. They would get 20 or 25 per cent, some of them said, and sometimes they said they wouldn't get free goods. They took Smith's goods and then they billed him.

Talking about yards and bolts, why in the light of the experience of what went on, and what they billed Smith for, there is no proof that it was ever delivered. If a bolt said 65 yards, there is no proof that 40 yards were in it. If a case was supposed to 2696
have contained five pieces, was Smith in a position to say, "You only sent me four or three." If Smith was in a position to squawk and say, "I want the full quantity, he would have gone up there and he would have said to these people, "Listen, where is that 400,000 yards you stole from the last order?"

That's what he would have said to Fine Goods. He would have said to McLaren of Meadtex, "Where are the 200,000 you stole from those orders?"

He was in no position to do that. He had to get goods. And when you have to get goods and when 2697
you have to stay in business and you have to manufacture sometimes you take less material than you order and you pay for more than is ordered.

What proof is there here as to the actual yardage delivered? In this exhibit prepared by the F. B. I., they had a column, "Yards ordered," "Yards invoiced," and then they had "Yard received." No, it was "Yards ordered" and "Yards received."

2698 I got up and I objected to that right away because there is no proof that Smith received or Daisart received those yards. So they changed it to "Yards ordered by Daisart" and "Yards invoiced," and "Yards paid for." Because in those days you had to pay for the invoice.

If you were dealing with these fellows and you had to get the goods, you not only had to keep quiet when they stole half of the goods from you, but you had to keep quiet when they billed double what they delivered, and that's what took place during this 2699 period.

I don't know, I have an abiding faith in justice, ladies and gentlemen, and I don't think justice is predicated upon the theory that you can take in the little fellow who had the pressure put onto him, you can take in the fellow who is put into a new environment, who increases his output to the extent that from a little sportswear place he takes in 60 people manufacturing things that he never even saw being manufactured before this time, and place him in a position where they say, Rush, Rush, get out bags, get out leggings, get out pea jackets, 2700 UNNRA, kits, and this and that. If you can tell a little fellow who goes up to these wolves, these people up there in those communities, who thrive on profits, who will even dye for profits—I mean d-y-e, and even dye when dyeing isn't necessary, but they wouldn't die for profits, but they will dye materials, they will finish materials, they will finish anybody that comes in contact with them in some way or another.

I don't know why, when they come into court they 2701
are not down here, but they are up there on the witness stand. They are put on the witness stand to tell the truth when the truth isn't in them, and you saw them there on the stand. You see their records that they produced. A fine looking man, McLaren. A fine looking man, Biehl. When they took the stand, with an aura of respectability, and you look at them and butter wouldn't melt in their mouth. And here the F. B. I. says that that guy McLaren gypped over 150,000 yards of goods, and the F. B. I. accountant 2702
says that the other fellow gypped over 400,000 yards of goods.

There is no proof that they used those goods to make a single dress for Government purposes, or a single lining of a Navy jacket. There is no proof whatsoever that they used those goods for any purpose which would be beneficial to the war effort. There is no proof, with the F. B. I. and all of the other agencies, of where that goods went. They come down here and sit up there and down here, with the United States of America against him, the insignifi- 2703
cant citizen, George Smith from New Jersey, the Daisart Sportswear, and here are corporations dealing in millions and millions of dollars and yards. They took 400,000 yards on one order from Smith. How many Smiths were there and how many Biehls were there that they took 400,000 and four million and forty million from?

And I mention that because you can determine the credibility of the witnesses from their testimony upon the stand.

2704 Ladies and gentlemen, there is some testimony in this case, and there are some bank accounts of Smith's. There are bank accounts showing cash deposits of Smith, and Mr. Rudykoff will probably emphasize the importance of it. There isn't a single transaction in this case where Smith is alleged to have sold anything for cash. Every transaction he took checks for and deposited them in his bank. Is that the attitude of a crook? Everything he paid for he paid by check.

2705 Mr. Rudykoff is going to turn around to Smith at the beginning of the summation and say, What a scheming fellow that is. What a sharp individual he is. And then he is going to tell you what a dope he is, because he paid for everything by check and say, Here are the checks. If a man is doing something crooked he wouldn't pay by check and wouldn't sell for check. And realizing that they call a guy here as a witness—and pardon me if I use the word "guy", it is the vernacular. I didn't go to Harvard. I never lived in Cambridge. I come from a little section in Brooklyn across the river, which I also hope you

2706 wouldn't hold against my client. Also the fact that he happened to come from Jersey.

A guy comes in here and he testifies that he bought goods from Smith. Let me see if I can recall who that fellow was. The fellow's name was Wolfe. He came in here and he testified that he bought goods from Smith and that he sold them to somebody for 57 cents a yard. 57 cents a yard is about the ceiling. He wasn't prosecuted. So to make it up he told you

he paid Smith 55 cents a yard for that. How did you pay him? Well, I paid him by check. And he brings his checkbook in here and it turns out that two of those checks, maybe there were three, I don't know, were payable to cash. And it appeared from the back of the check that he drew the cash himself. He says he gave that cash to Smith, and he can prove he gave it to Smith because on the lefthand corner of that check the invoice column, appears Daisart Sportswear and so forth and so on. 2707

May I have those checks, Mr. Rudykoff? I think they are Exhibits 39-A, B, C, D, and E. 2708

(Mr. Rudykoff hands exhibits to Mr. Hart.)

Mr. Hart: Of course, if you look at the photostatic copies of the checks you will see that this guy did draw out that cash on the 27th day of July, but the back of the check shows "O. K. for cash, Joseph Wolfe." It shows that Joseph Wolfe got the cash. Oh, no, that was given to Daisart and I can prove it to you because on the side here I've got "On account of so many yards," 36 thousand or 36,291 yards. 2709

Well, when you look at the photostatic copy of the check it isn't apparent, but I said to him, Was this written on before you cashed the check? Oh, yes, yes, it was.

Then I called for the originals, and luckily they were in court. I want you to look at these two checks and see the ink writing over the stamp of the bank and see that that ink was written in there some time

2710 after the cash was given to Wolfe by the bank, and it was given on the 27th day of July 1945. You can see how the ink covers the paying teller's stamp, and, certainly, if it was on there before, the stamp would cover the ink, and the same is true of these exhibits, and the two exhibits I am referring to here now are 39-D and 39-E in evidence.

This is the only witness who testified that he paid cash to Smith for any merchandise, and this witness is a liar and he has proven to be a liar by these checks. He cashed these checks and then after, when 2711 he was called in, he put this ink marking on there. When you see that 36,291, it almost covers "Paid" and if the stamp were put on there on top of the ink, the stamp would show and not the ink. But this guy had to show that he paid above ceiling and therefore there are two transactions where Smith is alleged to have taken cash, and these are the transactions. And the evidence establishes that that fellow got the cash and then he put the notation on the marker alongside of the check after it had cleared the bank.

Gentlemen, I can't review all of the evidence and 2712 I don't intend to. I started to sum up at approximately ten-thirty and now it is twenty minutes to twelve. I am going to pause in a few seconds in order to permit Mr. Rudykoff to finish before the noon recess so that his Honor may charge you before the—

The Court: I do not think we will have Mr. Rudykoff speak before the luncheon period. I think we will adjourn when you are through and have our

luncheon recess from twelve to one and then come back for Mr. Rudykoff's summation. 2713

Mr. Hart: All right, your Honor.

The Court: I think that will give you both ample time.

Mr. Hart: That is satisfactory to me, your Honor.

The Court: I think otherwise I would have to interrupt Mr. Rudykoff's summation.

Mr. Hart: Yes, I think that might be so.

The Court: If you want to take a little longer I will declare a few moments recess.

Mr. Hart: No, I am going to conclude. 2714

The Court: I do not want to hurry you.

Mr. Hart: I am going to conclude soon.

The Court: I do not want to hurry you, take your time.

Mr. Hart: I am not being hurried, your Honor.

The Court: You take your time.

Mr. Hart: I am perfectly at ease, your Honor, and I have been throughout the trial.

The Court: Very well.

Mr. Hart: Mr. Foreman, ladies and gentlemen of the jury. It would be stupid of me to try to analyze the testimony of sixty witnesses and 180 Exhibits, with sub exhibits amounting to ten or twelve in each instance. I have given you my thoughts with respect to what the background in this case is. 2715

You are asked to convict or dismiss. You are asked to convict Mr. Deeb. You are asked to convict the Daisart Sportswear Company. Because of the

2716 fact, first, that they obtained goods without a priority, when the evidence in the case indisputably shows that they had the priority. Secondly, you are asked to convict them because it is charged that they misused that priority and did not use the goods for the purposes specified in the priority, and his Honor I believe will charge you that they do not have to use it for the specific purpose and they may replace
2717 material and even sell material provided they used their own material obtained without a priority.

You are asked to stigmatize this man who, if you look at him, is not comparable to Robert Taylor, nor am I, nor are many of us. God gives us our looks, but our character is determined by circumstances over which we have control. And character is what we are. And reputation is what others think we are.

Smith has resided in his community in the State of New Jersey and during that time people have come in contact with him. And appearing on the witness stand is a rabbi who testified that he knows Smith
2718 and knows his wife and his family, who testified he knows them intimately. In fact he testified that he married Smith's daughter and Smith's son within the past year or so. He testified that Smith is active in civic affairs and is charitable and generous in his donations to those enterprises which need assistance. He has testified that Smith's reputation in that little community in which they reside is of the finest—excellent, as he characterizes it. He has said that he has never heard anything against George Smith.

There was also produced on behalf of the defendant Deeb—may I take the privilege of mentioning this because his counsel didn't mention it—his priest, who testifies that he is directly connected with the Diocese and the Archbishop of that particular Church; that he knows Deeb and knows his family, and Deeb has the finest reputation and he has never heard anything against him. 2719

There was also produced a man not of Smith's faith, Colonel Kelly, who took the witness stand and testified. And he testified that he knows Smith and his family socially. He knows his wife and he knows his children. And he testifies that they have mutual friends and that Smith's reputation among their mutual friends is of the highest, as is his reputation for honesty, integrity and fair dealing. 2720

Mr. Kelly is no bum. He is no profiteer. He is no fellow who purchases 400,000 yards of material on the side or squeezes people to the wall and makes them accept merchandise even though they don't want it, dyed or finished. Mr. Kelly is one of the leading citizens of the State of New Jersey. He served one term in public office as Superintendent of Banks of the State of New Jersey. He served as Superintendent of Insurance, State Superintendent of Insurance in the State of New Jersey. And he has something in common with Mr. Rudykoff because at one time he also was on the payroll of the United States Government in the State of New Jersey in no less a capacity than the United States Collector of Internal Revenue. He came into this courtroom and testified that Mr. 2721

Smith is a person of excellent character and he has heard nothing against him.

Those people have come forth for Smith to testify. Those are people of good repute. On the other hand, whom do you have? Biehl, the coward, from Berger & Sherin, who wouldn't answer his Honor's question as to whether or not he had ever sold Smith's goods in violation of law. You have Elson, the liar, who denied at first that he knew Bert Julian but scurried to the telephone to call him after he was before the grand jury. You have the profiteer Burgin, who admits that he wouldn't deliver gray goods, or any of the rest of them wouldn't because they wanted to guide them and get the profits.

You have Steinam, Meadtex, McLaren, the people who short-changed George Smith not only in the amount they didn't deliver but short-changed him in the amount they did deliver.

Smith didn't sell for cash. The United States Attorney will point to certain cash transactions and deposits by Smith in the bank in New Jersey, and he will try to ask you to infer that from the amount of cash deposited that Smith was getting cash. There isn't the testimony of any individual in this case that Smith sold any of this merchandise for cash, except that one fellow who produced the phony checks on which he placed the endorsements.

I ask you when that reference is made to the cash that was deposited to bear this in mind, that Smith is not on trial now for income tax violation or for income tax fraud. If there is cash deposited which he

can't account for in one of his accounts in Jersey, 2725
there is no proof that it came from any of these transactions, and the United States Bureau of Internal Revenue if they see fit, can question him concerning that, but his Honor will charge you that this defendant is not on trial for income tax violation. He is on trial for the specific charges contained in the information and in the indictment.

I have spoken to you and I have concluded, ladies and gentlemen. After me, Mr. Rudykoff will speak; and I ask you to bear this in mind, and I say it un- 2726
hesitatingly because I know his Honor will tell you that it is the law: that when you go into the jury room to consider the evidence in this case you have the right to consider the nature of the testimony, the character of the individuals who gave it; whatever I say, whatever Mr. Rudykoff says, even whatever his Honor says, you are the sole judges of the facts in this case and your recollection of the facts control. You are the sole judge of the credibility of the witnesses and what weight you are going to give their testimony. If you believe witnesses wilfully falsified with respect to any material fact, his Honor will 2727
charge you that you are at liberty to disregard the entire testimony of that witness, or you may accept such part of it as you see fit and reject the rest.

These defendants have come before you, men of unblemished character, not convicts, not thieves, not black marketeers, but people whom their priests and rabbis and associates of different religion have testified are respectable citizens.

2728 The evidence of good character, his Honor will charge you, can give rise to a reasonable doubt of the guilt of these defendants in your mind even though no reasonable doubt would otherwise exist, and you can resolve that reasonable doubt in favor of the defendants.

Of course good character is no excuse for the commission of a crime, but you may take the fact into
2729 consideration that these men are men of good repute, and the other people who have testified here upon the record and upon the production of their own evidence, are men whom we can look askance at and wonder why they are up there instead of down here.

Gentlemen—ladies and gentlemen—if in the course of my summation I have said "gentlemen" more often than "ladies and gentlemen," it is due to more than thirty years of training and experience with only men on a jury, but it is a privilege to have ladies on the jury, and I ask you to forgive me for not having
2730 said "ladies and gentlemen."

I am only human. I cannot recall all of the evidence in this case, nor can I within an hour and a half's time encompass within my mind and utter every bit of evidence or every inference that may be drawn. I ask you, you, you, and each of you jurors to go into the jury room and decide this case on the basis of your individual opinion and conviction, your state of mind at the time the vote is taken, if the vote is taken.

Don't say "Well, I may be in the minority, I am going to change my vote to be a good fellow," or "I

am going to compromise my vote and I will vote guilty on one count. Maybe that will satisfy them. Maybe the rest of them will think I am obstinate." 2731

If after two, three, four, five or ten hours you feel that you have a reasonable doubt in your mind as to the guilt of this defendant and as to whether or not these defendants should be the ones on trial, I ask you not only to keep the promise which you made when you went into the jurybox but to abide by your oath and continue to vote not guilty on any count in this information or on any count in the indictment. I ask you to give this defendant, as one 2732
of the people of the United States of America, as a defendant in the case of the United States of America against George Smith and Daisart, and this defendant George Deeb, the benefit of the many reasonable doubts that exist in this case, and I know that upon the conclusion of your deliberations that you will have arrived at a verdict which is just, and in humbleness and in all sincerity I say to you that the only just verdict in this case, based upon the evidence in this case, and based upon the failure of the F. B. I. and the other agencies to produce evidence, the only 2733
justifiable verdict that can be brought in by the jury, I am sure you will agree, will be a verdict of not guilty with respect to each and every charge contained in the informations and the indictment.

I thank you for your attention. I thank you for your patience and tolerance. It is indeed a happy moment when one in this world of trouble can stand before an American jury and plead on behalf of a

client, and I know that in all fairness you will analyze
2734 this situation, and you will realize that what I have said is not evidence and what Mr. Rudykoff has to say is not evidence, that what the Court will say is not evidence, but what you remember is the evidence in this case, and I know that your verdict will be fair and that the only fair verdict will be not guilty with respect to each and every count and charge against these defendants.

Thank you.

The Court: The court will adjourn now until one-fifteen. The admonition that I have heretofore given
2735 you still holds. Be back at one-fifteen and then we will hear the summation by the Government and the charge of the Court.

(Recess until 1:15 p. m.)

AFTERNOON SESSION

The Court: All right, Mr. Rudykoff.

THE GOVERNMENT'S SUMMATION.

2736 Mr. Rudykoff: May it please the Court, counsel for the defendants, Mr. Foreman, ladies and gentlemen. This has been a long trial. You have been very patient. In behalf of the Government I want to thank you at this time for the patience you have exercised during this trial. At best in spots it was not very interesting and I appreciate that. However, I can-

not say that you have not given to this case the attention it deserved. It is an important case to the Government as well as to the defendants. 2737

It is my duty at this time to point out the evidence in support of the informations and the indictment.

In deciding this case there cannot be any question but that the only approach is one which as far as possible puts aside any emotional reaction. It is difficult to exercise that judgment—we are all human—however, any judgment, any verdict, whether it be one of acquittal or guilt, which is prompted purely by an emotional reaction is unjust, because your verdict must be grounded in reason. 2738

The Government undertakes to establish beyond a reasonable doubt the charges, and that means no more than that you have been convinced by the exercise of your reason and not by any emotional reaction, that these defendants are or are not guilty.

At this time I think it is no more than proper than that we revert to the charge itself, and I think the case logically can be separated into two; that part of the case which deals with the priorities, and that part of it which deals with the violation of the OPA, insofar as a conspiracy is alleged to do just that, and with regard to the informations, both relate to priorities. 2739

One alleges in substance that the defendants unlawfully and wilfully applied and extended preference ratings for textiles which they were not entitled to apply or extend. The other information in substance simply says that these defendants unlawfully and wilfully failed to utilize the textiles so ob-

tained for the purpose certified or for any other use
2740 justified by the application of that rating.

In approaching a consideration of the issues relating to ratings, I suppose the first question involved is what kind of ratings are we talking about. It is clear and I do not think there can be any possible dispute, that the ratings are what we know as AA ratings. In every case they were either AA-1 or AA-2X, except in one case, and that is not of too great significance—in one case involving count 39, the rating used was AA-3, and that only involved 2775 yards, with which we cannot waste too much
2741 time.

Those ratings were ratings for war purposes. And I think that is best demonstrated by the characterizations made of them by the expert witness Burgin, if you recall, of Colonial Mills. I think his reaction was almost spontaneous when he responded to questions put on cross-examination.

He said in effect: We could not question these ratings. They were for war purposes. So that they carried without any doubt a very definite significance to those to whom they were applied and extended.

2742 If there be any question about that, we have only to turn to the circumstances under which those ratings were issued. And at that point I think it is only proper that we pause and consider what justification we have for pointing to a particular source for those ratings.

I think the first indication of that is in the testimony of Mr. Berman, who in August of 1945 as a representative of the War Production Board and in

an official capacity, interviewed Mr. Smith at his plant in New Jersey in the presence of his accountant, and his associate, Mr. Pindek. 2743

Now, August 1945 was at a time long after the events with which we are concerned in this particular proceeding insofar as they relate to the application of these priorities. And I say that because the last application charged is one dated July 18, 1945. This is an interview a month later, and that is quite fresh in the minds of everyone.

Berman's questions were directed at ascertaining the source of these priorities. It was a perfectly logical question. That is what he was there for, to find out something about the priorities being used: 2744

"Q. Now, did you have some talk about priorities? A. Yes.

"Q. With whom did you have it, and what was said? A. With Mr. Smith, and I asked wheth r, what priorities he had, and he told me that the purchase of the goods was predicated on a blanket order which Daisart received from the Metals Disintegrating Company to purchase all the piece goods needed to manufacture powder filter bags. Mr. Smith also stated that he was advised by Metals Disintegrating Company that they were unable to obtain the necessary material for the powder bags and therefore had given Daisart a blanket order as mentioned heretofore." 2745

There is no question there but that Mr. Smith at that time gives as the sole source for his authority to extend and apply these ratings the Metals Disin-

2746 tegrating Company, and that if there were any other source or any other basis for the application of the rating, certainly he should have spoken of it at that time and would have.

So much for August of 1945. But we have more than that. We come down to April 30, 1946, and this represents an examination of the corporation.

The Court has instructed you, and I direct your attention to his instruction, that it is not binding upon Smith personally; since these ratings were applied by the corporation, this is, of course, relevant as against the corporation.

2747 We now come to a period, April 30, 1946; a sworn statement:

"Q. Mr. Smith, you stated that Daisart Sportswear Inc. was a contractor instead of a manufacturer, is that correct? A. Yes.

"Q. In connection with its contracting activities did Daisart Sportswear, Inc., at any time receive any fabrics or materials from the manufacturer? A. At all times."

Mind you, "at all times."

2748

"Q. By manufacturer, I mean the company you were working for as a contractor at all times purchased the materials? A. We simply supplied labor, trimmings, etc.

"Q. And what was the custom engaged in by these manufacturers in buying materials for Daisart Sportswear Inc., did they supply a sufficient amount

for a particular commodity that you were contracting for them? A. At all times. Materials only.

"Q. Did you ever receive an excess of materials? The excess was returned to the manufacturer as you call him? A. Correct.

"Q. With respect to the sale of materials and fabrics by Daisart Sportswear, Inc., those were not materials that were supplied to you by the manufacturer? A. At times they were.

"Q. It is customary for a manufacturer to supply sufficient materials in keeping with his marker, if you were able to save that, it was an unwritten understanding that that material was yours to do with what you pleased? A. That would be so with wearing apparel.

"Q. And with respect to ammunition bags? A. Since the ammunition bags were never in a set or standard size, the waste in most instances almost equalled the amount actually used.

"Q. Were you supplied with markers for these ammunition bags? A. We were not.

"Q. And did the manufacturer or person having the contract with the U. S. Government know that the fall away or waste that you saved in the cutting represented almost as much as the actual material used in cutting? A. They did.

"Q. Did the manufacturer having the contract with the U. S. Government make any claim of Daisart Sportswear, Inc., with respect to this fall away? A. On any number of occasions when materials were short, we used it for that but they, at all times, knew that it was their material.

2752 "Q. What procedure was followed by Daisart, did the manufacturer bill Daisart Sportswear Inc. for material? A. Never.

"Q. Did it consign it? A. Simply shipped it for the use.

"Q. And how did Daisart Sportswear Inc. bill the manufacturer for the finished garments? A. For so many finished garments.

"Q. So that with respect to Daisart Sportswear, Inc. contracting activities on ammunition bags materials, were shipped by the manufacturer without bills? A. It was not. Metals Disintegrating Company being a foreign concern and being unable to furnish this material, they asked me to purchase materials for them. They were aware that I cannot do that without proper priorities. Those priorities were forthcoming in a blanket sum. No stipulated amount and I was further told to maintain a constant stock for any orders they may call. I mean Daisart Sportswear Inc. for any orders they may call for. Their orders came to me sometimes dated and never in any set size or specified form. They charged from day to day. I then went about purchasing material for their work. When and if I had a surplus, I would notify them and ask them if they had anything immediately on hand as I am overstocked, at which time they told me they had not, and to dispose of it."

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Now, what is the sum and substance of that testimony? It falls into two distinct categories: first, Daisart is a contractor as distinguished from a manu-

facturer. It is doing work for others on materials supplied by them. As to that work, of course the materials are furnished by the manufacturers. 2755

However, with regard to these bags, those were bought—that is, the materials were bought for the making of these bags on priorities which were authorized by Metals Disintegrating Company. Of course that is a very important point in the case insofar as the argument has been made that the material was utilized for other purposes.

I think it is clear from this statement that with regard to any other work that Daisart was doing at the time, according to this one statement, it was 2756 doing the work as a contractor on materials furnished by others, but that insofar as work done for Metals, that material came to them by reason of purchases authorized by the priorities now in question.

So that we have a more or less firm and I would say almost absolute basis which is unassailable for the assumption that the only logical and the only legal basis for the application of these priorities was the authority, such as it was, which was received by Daisart through Metals Disintegrating Company. 2757

And if there was any other reason for the application of these priorities, it certainly is strange that at no time was that assertion made, in August of 1945 or in April of 1946, when the probability is that there was more reason for advancing the best possible excuse.

We are now then directed to Metals Disintegrating Company. There we find the records of the company,

and of course, I say this cannot be doubted in the
2758 least, that the most normal thing to do, if a defendant or several defendants point to a particular source for their authority, it is to ascertain what the records of the company prove as to who was supposed to have authorized these priorities.

Now we have the records of the company. There is some question about their completeness. We will deal with that. The first step in ascertaining what those records were was to call Rosenquist. You may not recall that Rosenquist was the assistant controller
2759 of Metals Disintegrating Company, a man who presumably knows what records Metals Disintegrating had.

Now with regard to his description of the exhibits, to which I shall make reference shortly, we find his testimony is this:

"Q. Now, with regard to the various invoices which are part of Government's Exhibits 1, 2, 3 and 4, do they represent all of the invoices and orders relating thereto which relate to business transacted with Daisart Sportswear during 1945 and the latter part of 1944? A. I believe so. We have checked our rec-
2760 ords pretty thoroughly."

Of course that is all that you can expect of any individual, that he would look thoroughly and locate all records pertaining to a particular subject. And there can be no doubt that the records produced by Metals Disintegrating Company represent all the records relating to their transactions with Daisart or Smith.

There was no attempt on cross examination to question the authenticity of the records or the credibility of Mr. Rosenquist's testimony. He has no interest in this litigation. He has no axe to grind. The sum and substance of the cross examination with regard to Rosenquist if you recall it was that he had no personal knowledge with regard to the transactions. No one claimed that he did. All that we did claim was that all the records pertaining to those transactions were in court and had been identified by him. As to what the transactions were, the records speak for themselves, as well as the evidence of the other witnesses in the case. 2761 2762

We therefore again have a pretty solid step upon which to go forward in this case. We have the records of Metals Disintegrating Company which show these transactions with Daisart. Those records appear in Government's Exhibits 1, 2, 3 and 4.

There has been some talk about the fact that there were some bags made for St. Louis which were not represented by these records. That is not a fact. The fact is that these records disclose bags made for St. Louis.

We have one invoice, under Government's Exhibit 1, which is on the stationery of Daisart Manufacturing Company, addressed to Metals Disintegrating Company, at Verona, which describes sales invoice No. 204, description, 250 reg., which I presume means regular, bags at 10 cents, total $25.00; 28 special (St. Louis) bags at 50 cents, total $14; and the aggregate total is $39.00. 2763

We have at least one other invoice which is No.
2764 207, of Daisart Manufacturing Company, addressed to Metals Disintegrating Company, 156 bags, various sizes, $78, and down at the bottom "Above bags sent to Elizabeth Motors for St. Louis plant. Please send check as soon as possible."

What does that show? It shows that the records of Metals Disintegrating Company, as they have been produced here and identified and authenticated by Mr. Rosenquist, not only relate to transactions which involve bags destined for Elizabeth, but also
2765 relate to bags destined for St. Louis.

There also has been a suggestion that there were many bags delivered to Verona and that by some stretch of the imagination, and heaping inference upon inference, they may not be reflected in these records. I say to you that if you care to examine these invoices you will find quite a few invoices directed to Verona which were paid by check of Metals Disintegrating Company.

So that any claim or any attack upon the integrity of these records is purely one based upon speculation. And if there can be or if there is any
2766 remaining doubt about that, I think that is dissipated completely when there is recalled to you the testimony on cross examination of Mr. Forrest. Mind you, at this time Mr. Forrest was not connected with the Metals Disintegrating Company. He has his own company. He does not have the benefit of a recent examination of these records which were produced by Rosenquist. Therefore he is testifying

absolutely from memory. And he is asked as follows—and this is on cross examination: 2767

"Q. What did the purchase of bags run into? A. Would you like an estimate?

"Q. Well, yes. A. Seven or eight thousand bags and materials.

"Q. Pardon? A. Bags and materials.

"Q. The Court? Seven or eight thousand what?

"The Witness: Seven or eight thousand dollars."

And the schedule to which I shall have reference to later supports this estimate almost to the dollar. 2768 There is a man who bought or had authority in respect to all purchases made, who was being asked on cross examination to give an estimate as to the dollar value of the purchases involved, and he makes that estimate, of course without any suspicion whatsoever that there was going to be an analysis made of the purchase orders and so forth, and it is, coincidentally, about the same as the actual amount as the computations made by Mr. Cogan.

So that we have here the type of corroboration which it is difficult, if not impossible, to question. And I say to you that there cannot be any question 2769 whatsoever as to the authenticity and the validity, the regularity and the completeness of the records of Metals Disintegrating Company.

We have established that step in our progress. Now of course the logical question to ask is, what do those records show? And for that we turn to Exhibit 154, which is an analysis of the records of

Metals Disintegrating Company, made by agent
2770 Cogan, and what does that analysis show?

Total square yards involved in all these bags, 48,920.

Now there has been some talk about the bulge, the Battle of the Bulge—some attempt to indicate that there was a good deal of confusion, that the orders were stepped up at or about that time, and that consequently a good part of the orders placed may be explained by reason of that occurrence.

And you may recall that there was a breakdown
2771 of figures prepared by Mr. Cogan with regard to what happened before December 1944 and what happened after December 1944. The Bulge did take place in December of 1944, and the breakdown shows as follows:

Before December 1944 11,795 bags. After December 1944 192.

So that any explanation which points to that occurrence obviously is not an explanation. It is merely an attempt at it.

What do we find with regard to dollars. And there I recall to you the testimony of Mr. Forrest:
2772 total price paid by Metals to Daisart, and this embraces all of the orders, $7959.70. That is what I call a pretty good guess on the part of an individual who has not had access to the records, but does have personal knowledge as to the transactions.

Now on the basis of that authority or alleged authority what was done? I think that is a very fair inquiry, and coming to some determination as to whether these priorities were applied illegally

and also as to whether there was a diversion of the materials obtained as a result of such applications, and in that connection I refer to your attention the facts evidenced by Government's Exhibits 155 and 156 which are predicated upon documents in evidence. 2773

What do they show? First, we have an analysis of all of the material ordered and invoiced to Daisart, in connection with which these ratings were applied and extended.

We are not concerned with any orders which were for material not supported by ratings, but these are rated orders. And we find that orders were placed by Daisart with respect to materials aggregating 4,157,275 yards. 2774

You will recall that on the calculation of the bags involved in connection with the transactions had with Metals Disintegrating Company the total material utilized in round figures was about 50,000 yards.

Compare that with 4,157,275 ordered. I think that that is so many times the amount required that in and of itself it is almost conclusive evidence that at the time the orders were placed, whoever placed them had no intention to use them for the purpose certified in connection with those orders. 2775

So we do not have to rely on that at all. We can point to other evidence.

As a result of those orders, we find invoices rendered to Daisart with regard to 3,086,000 yards of material. These are figures with regard to invoices actually rendered, actually paid by Daisart.

2776 And again, at this time I would like to direct your attention to what is in effect an insinuation but is entirely unsupported by any evidence whatsoever. There is an attempt at making you believe that some of this 3,086,000 yards of material was not in fact received. And I submit to you that there is absolutely no factual basis for any such assertion. Surely, Daisart would not have paid for invoices aggregating 3 million yards of material if they had not received that material. And, certainly, it is going a little too far to impute the dishonesty, the pettiness and the illegality which necessarily attends such 2777 false invoices to each and every one of the suppliers who appeared before you during the course of this trial.

You might inquire, what part of this material was ordered with the specific representation as to the end use here involved.

We have in some cases—there weren't many—where the AA priority was used and no end use certified. But we have quite a number of cases wherein the orders involved not only was there a specification of AA-1 or AA-2, but also a specific 2778 certification that these materials when received would be used for ammunition bags. Of course, there is no occasion for making any such certification if he had some other use for the materials which is justified by the AA extension or application, but there is this specific representation made which is certified to formally by a stamp, in each case signed by George Smith as an officer of the corporation.

And that would have been an empty gesture, I submit to you, if there was any intention to use those materials for any other purpose justified by the rating, because it would have been very simple for him to set that forth. The mere fact that he did not set it forth, in addition to the statement I referred to made under oath on April 30, 1946, can only demonstrate that this claim with regard to utilizing the material for some other justified purpose is one made out of the whole cloth and has absolutely no basis whatsoever. 2779

But getting back to the specific certifications—and I am confining myself to those which involved specifically the end use of powder bags, you will find upon an examination of this particular exhibit, which is 156, that out of the total rated orders, the rated orders which specifically applied to an end use relating to powder bags, were 3,732,000 yards. 2780

Recall the 50,000 actually used and compare it with the 3,732,000.

And as to those orders there were invoiced to Daisart and paid for by Daisart in connection with those orders relating directly to end use powder bags 2,642,000 yards. 2781

Now, that can be very simply ascertained, if you care to, by taking the total appearing on Exhibit 156, which is 4,157,000 and some odd yards, and subtracting from it all of the items which do not relate to powder bags, which are relatively few, but you will get the figures that I have just quoted to you. And that, if you please, is actually 52 times

the materials actually used for powder bag purposes.

2782 There has been some attempt at justifying the use of these priorities. And, in so far as I can, even though they, in my opinion—and, of course, you are not bound by my opinion—are merely based upon speculation, I shall meet those claims.

Some reference has been made to a letter dated March 2, 1945, Exhibit 8. The letter has not been read to you. The defendants' argument is based upon it. Therefore, I think it is only fair that I read it to you at this time.

2783 It is dated March 2, 1945, addressed to Daisart Manufacturing Company, 99 Central Avenue, Newark, New Jersey.

"Attention Mr. Smith.

"Gentlemen: In reply to your recent request for contract numbers to cover materials furnished to us, please be advised that herewith appears a partial list"—

setting forth the list. Following the list is the following:

2784 "For your information the last item consumed"—

Mr. Hart: The first item consumed.

Mr. Rudykoff: I am reading the exhibit and it says "the last item".

Mr. Hart: May I see that?

Mr. Rudykoff: Yes (handing).

Mr. Hart: I have it as the first item.

Mr. Rudykoff: Well, I submit, your Honor, that we can only go by the evidence. 2785

Mr. Hart: My copy says "the first item".

The Court: We will try not to have interruptions during summation.

Mr. Hart: I thought it was the—

The Court: If you find it is necessary for the protection of your clients' interests to do so, but try not to do it unless you feel it is absolutely necessary.

Mr. Rudykoff: After this listing is the following statement: 2786

"For your information the last item consumed the principal part of materials supplied by you. We trust the above information will enable you to complete your files.

"Yours very truly,

"Metals Disintegrating Co., Inc."

Reading this letter in and of itself, I submit to you, is a very tenuous basis for authority to extent three or four million yards in connection with Metals Disintegrating bags. At best, it is in response to a request for information. 2787

However, we have some testimony on that score, and I shall direct your attention to it.

This is Mr. Forrest, who signed that letter in behalf of Metals Disintegrating Company:

"Q. I direct your attention to Government's Exhibit 8 in evidence"—

this is Government's Exhibit 8 in evidence (indi-

cating)—"and ask you whether you had any talk
2788 with George Smith prior to March 8, 1945?

"A. Yes, I did.

"Q. Was your talk in relation to the contents of that letter which is Government's Exhibit 8 in evidence?

"A. Yes.

"Q. Was that a telephone talk? A. Yes, it was a telephone conversation.

"Q. Will you tell us what he said and what you said?

2789 "A. The gist of the conversation was to the effect that the rating which was MROAA-1 was not sufficient and that we would have to have a better rating for him to secure material for our purpose or for our use.

"Mr. Hart: It does not appear who said that.

"The Court: No. Who wanted the better rating? Who said it was not sufficient?

"The Witness: Mr. Smith."

All that comes down to is this: Apparently Mr. Smith was having some difficulty with regard to
2790 using these priorities. He wanted more authority than he could properly muster at the time, and he was asking Mr. Forrest to furnish more information with regard to these priorities, but you would have to go pretty far, and certainly infer upon inference several times removed that that represents authority to extend and apply the vast amount of priorities which are involved here.

However, there again we do not have to depend upon that completely. This is a letter dated March 2791
2, 1945, and, of course, a pertinent inquiry would be, what had Smith been doing up to that point? How many orders had he placed? And, certainly, prior to March 2, 1945, there was no occasion for imagining what the authority was.

And then we turn again to Exhibit 156 and we find quite a number of orders placed prior to March 2, 1945. And I am speaking again of rated orders.

And there we find, if you will examine these orders dated before March 2, 1945, and they run from 2792
December 13, 1944 down to March of 1945, and approximately are about 16 orders, those orders relate to over one million yards of material, and in each case they are rated orders. And that is at a time when there wasn't too much doubt as to what authority if any Mr. Smith or Daisart had with regard to ratings.

And, again, if you break that down that particular set of orders you will find that in so far as powder bags, and that involved a particular certification and representation in each case, and I have read that time and again to you in the course of the 2793
trial and shall not bother you again with it—with regard to those they were related to 755,000 yards of material.

Again I direct your attention to the fact that only 50,000 yards were involved in these bags. So that you have there prior to March of 1945 the application of over 15 times more than the required amount of materials.

2794 And, certainly, after March 1945 it was really in excess of the amount required in connection with these bags.

So much for the explanation which depends upon the March 2nd letter.

It might be well in that connection to call your attention to one additional fact. Of course, there being only approximately one million yards involved with regard to rated orders prior to March 2nd, and since the total yards ordered in this case amounts to over four million, the conclusion is that

2795 after March of 1945 the rated orders were in connection with about three million yards of material, and there we find a very interesting contrast indicating the boldness of this claim and how utterly absurd it is.

After December 17, 1944, as I called to your attention previously, there were only 192 bags delivered by Daisart to Metals, and the justification for 192 bags is three million yards of material ordered.

Another attempted explanation for the use of these priorities is that Daisart was engaged in many

2796 activities which carried with it the right to use these priorities although it may not be that they were connected with ammunition bags, and although there was a specific representation and certification that they would be used for ammunition bags. I will admit for the purpose of this case that if the situation occurred where a contractor ordered material in connection with some work which was rated, and by some miscalculation or by facts or circumstances

which were unforeseen he was unable to use that material for the specified purpose, and if he had some other legitimate purpose which also carried with it that rating, he could without being accused of any criminal act use that material for the other purpose. 2797

But that, of course, is not the fact here, and all you would have to do to recognize that is to recall the testimony of April 30, 1946, because there the corporation gives sworn testimony which, as I have indicated heretofore, is that with regard to materials as to which it was acting as contractor, those materials were furnished by the manufacturer. Daisart had nothing to do with the purchase of these materials. It merely furnished the work, the trimmings and the labor connected with the manufacturing process. 2798

The only case in which he had any authority whatsoever was that relating to the work done by Metals Disintegrating Company. And at no time, at no time was there any claim made that there was any other justification for the ordering of this material except the work done for Metals Disintegrating Company.

Now, certainly, there wasn't any reason which one can logically point to which would prevent Daisart or Smith from disclosing the fact that he had used it in connection with other rated work, and yet never was that explanation made. Why? The reason is apparent in that sworn testimony. 2799

Aside from the compelling evidence to which I have made reference throughout the case, you have had brought before you various compelling other

circumstances which indicates that there was never
2800 any intention to use this material for any purpose relating to AA priorities, and I will merely mention those to recall them to your attention.

First, recall the variety of colors used. You may recall that Noel, the engineer for Metals Disintegrating Company, was pretty clear about the fact that material appeared to him to be somewhat in the nature of tent material. That certainly does not accord with the wide variety of colors which were brought to your attention in the course of this trial.

Recall also the variety of finishes involved, which
2801 ran the gamut of the entire textile field. Certainly, they are not consistent with the use of these materials for ammunition bags.

And then, of course, there is the absolute evidence as to resales to which I shall make reference shortly. Resales of materials in their original packing, and that, of course, cannot be held to be consistent with the use of material for rated purposes.

There has been some claim made that there was some change in or about September or August of 1945 which justified sales. You will find, as I will
2802 have occasion to bring to your attention from time to time hereafter, that those sales ran from February 1945 right through this entire period, so that they were not concentrated in this particular month of September, but they were a regular course of business indulged in by these defendants.

And if there be any further question about the intent to misapply and to divert, I shall have occasion to call to your attention the fact that these mate-

rials were sold not months after their receipt but almost immediately in point of days, and in some few cases they were actually sold before they were delivered in anticipation of delivery. 2803

That certainly is not consistent with an intent to order materials for a specified purpose connected with ratings nor to use those materials for those purposes.

And one other fact, perhaps, which might throw some light upon the situation and to which you might give some effect, and that is this: Recall that the value in dollars and cents of the business done with Metals Disintegrating Company was in round figures $8000. Now, compare that with the total charges for purchases of piecegoods made by Daisart. $1,194,694.63. 2804

How any such amount in purchases can be justified on the basis of the work done for Metals Disintegrating Company is certainly something for the imagination to conjure with. I fail to see it.

There has been some suggestion that the computation of the dimensions and the square yards involved in the making of these bags is not a fair method of ascertaining the materials involved because there was waste. I am willing now to take that into consideration. And there again we rely upon a sworn statement made in behalf of the corporation which appears in Exhibit 147-A, page 17. 2805

"Q. And with respect to ammunition bags? A. Since the ammunition bags were never in a set or standard size, the waste in most instances almost equalled the amount actually used."

2806 I am willing to take that statement at its face value, and I say to you, double the 50,000 and you will have 100,000, and I say to you that the net result is not changed one whit.

I think we are about ready to consider the other phase of the case, and that involves the question of conspiracy to violate the Emergency Price Control Act. And at the threshhold I think it is fair to disabuse your minds as to any residue of doubt that may be there as to whether the Emergency Price Control was in effect during the time here involved.

2807 I think perhaps it was a misstatement but, as I understand it, the claim was made during the course of summation that some time in September of 1945 there was some change as to control, and I say to you that during the period involved here, right through 1945 at any rate, price control was still in effect, and that any sales made during that period was subject to price control. So that there was not, at any time in the course of the transactions here involved, any legal justification for extorting prices in excess of the maximum prices provided for by law.

2808 Now addressing ourselves to the question of conspiracy, the essence of the charge is simply that the defendants unlawfully agreed to violate the Emergency Price Control Act, and in that regard they agreed to obtain textiles by the illegal application of priorities, and that it was part of the conspiracy to sell in excess of the prices allowed by law, and in those sales to use invoices which referred to unnamed fictitious sellers, to accept checks payable to fictitious

sellers, and to fail to keep for inspection accurate records of purchases and sales. 2809

You have before you in its broad aspects the conspiracy which we claim existed. I shall now direct your attention to the evidence which supports it.

Exhibit 158 is the Government's analysis of the documents in evidence. These are predicated solely upon evidence in the case. I think at this time it might also be well to recall, so that we may give it the proper emphasis, the claim with regard to non-delivery of certain yardages.

I have spoken to you of yards invoiced and have demonstrated to you that the number of yards invoiced was in excess of three million yards. I do not think it is asking too much to assume that having been invoiced, Daisart in addition having paid for that yardage, that it either received it physically or else received it for its account and used it or sold it as the case may be. I mean that does not involve any violation of any common sense rule. 2810

It would be a very unusual situation for any firm or individual to pay for something it had not received the benefit of. So it should not in any way offend your sense of fairness, and we assume that when we speak of invoices we speak, for practical purposes, of yards received. 2811

Exhibit 158 shows 784,000 yards of material invoiced to Daisart.

Let us pause at this point to evaluate that bit of information. In order to trace this material it was necessary not only to establish the source of the material to the various suppliers, but it was also

2812 necessary to establish to whom they had been sold or delivered eventually. And, in that connection, there was no comfort given to the investigators by reason of information or books of Daisart, because the testimony of Berman on that score is with regard to piecegoods there was no information or record in the books of Daisart with regard to sales. And, of course, in April of 1946 the claim was that there were no books or records of the company.

I think the statement of Berman on the subject is quite important to have taken this time to locate it:

2813 "Q. Did you find any entries relating to sales of piece goods? A. None."

So you have the direct question relating to piece goods sales and you have a direct response, so there is no question about it whatsoever.

And, what is more, the questioning of Berman discloses that at the time this examination was being made, in August 1945, only one checkbook was submitted to him and that was on the First National Bank, and I shall have occasion to call to your attention later that there was a Daisart account in the Fidelity National Bank which was of substantial proportions.

2814

So, obviously, all of the records with regard to transactions were not submitted to Berman at the time he was at the Daisart place of business in 1945.

With the lack of information as to whom those sales were made, it was obviously necessary to obtain that information from external sources; that is, investigating outside the books and records of Daisart Sportswear.

The difficulty of that task need not be dwelled upon. You can readily see how difficult a task that is, collecting the entire story for the purpose of ascertaining who they dealt with with relation to materials emanating from a certain supplier. 2815

So that when there is brought to your attention transactions which involve 780,000 yards of material, that is a pretty good sampling of the materials here involved. And what happened to them is a pretty good indication as to the nature and extent of the transactions and the conspiracy here involved.

This 780,000 yards of material is unquestionably traced into Daisart. I mean, of that there can be no dispute about because we have the testimony of the various suppliers supported by their invoices showing that on X date they invoiced the materials to Daisart, and that this material was paid for by the check of Daisart. 2816

Not only do we have that testimony, but we have the invoices themselves which specify the materials by case numbers as well as yardages.

In that regard I direct your attention to more than one witness who testified in substance and effect that it was the customary practice and usage in the textile industry to invoice the material according to case numbers and the yardages. It is therefore fair to assume that that is the correct and accurate way of doing just that, because when business men, day in and day out, are willing to rely on descriptions of that character and pay in accordance with those descriptions, there can be no doubt that that is a fair and accurate description upon which you may rely. 2817

2818 Out of this 780,000 yards of material, which as I say cannot be doubted as having been traced into Daisart, 570,000 yards have been checked out by case number as well as yardage, and that is in accordance with the common customary way of identifying material in the textile industry, and that is indicated in each of the schedules which consist of and constitute part of 158 in evidence, in the column in each case which is numbered 14 and which is headed "Yards of goods"; in columns 5 and 11, which coincide in case number plus yards per case. That is as to the 580,000.

2819 The remaining, which is approximately 200,000, has been identified by the coincidence in yardages in cases or bales. Now I grant you that in those cases the identification is not as absolute as it was in the case of the 580,000, but I submit to you that such a coincidence is a very important factor and that it should be considered by you as substantial evidence of the identity of the materials involved.

Coincidences of that kind mathematically do not occur too often. It isn't often that you find that X number of bales aggregating X yardage, one case 2820 is the equivalent to another case which is in the hands of an entirely different party and that there is not some relationship between them. It may occur once in a thousand times, but when as here it occurs time and again that the coincidence is present, I think we are fairly clear that that coincidence establishes reasonably that the identification is complete. But that, as I say, only affects at the most 200,000 yards of this material.

Now, going from that, what do we observe as to the proceeds of the materials which have been so identified as being in the hands of various manufacturers throughout the metropolitan district of New York. 2821

And here we are painting with a rather broad brush, but I think nevertheless accurately, and when I speak of proceeds, I am confining myself now to what is in large measure, except in few minor instances, represented by checks—checks which have been passed into various hands and deposited ultimately, and which have been submitted here and which are in evidence and are described appropriately in the various schedules which appear before you. 2822

Now those checks for materials sold originally to Daisart and thereafter which eventually came into the possession of various manufacturers located in the district of metropolitan New York, engaged in various enterprises, various apparel, handkerchiefs for men and women and so forth, show that they were deposited to one of several accounts: Daisart Manufacturing Company, George Smith, Daisart Sportswear, Deeb. And then we find a number of deposits to two individuals, that is, the account of two individuals, Barney Levine and Philip Paver. 2823

Now every one of those checks is accounted for in one of the ways I have indicated. No check is unaccounted for.

Now as to the checks which appear to have been deposited in the account of Barney Levine or Philip Paver, we find this coincidence, and that is true of every deposit made to those accounts: they are

2824 checks made payable to L. A. Fox, checks made payable to George Howard. So that we find that every other check is deposited in the account of one or the other defendant here present.

Now as to L. A. Fox, we find upon an examination of the facts relating to that particular alleged individual, that his alleged address is 1133 Broadway, his alleged telephone number is Watkins 9-3868.

We have established I think to your satisfaction, through the evidence of the telephone company, that that particular telephone listing was in the name of one Israel Raichel, and that there was no listing whatsoever for L. A. Fox.

2825

I think that you may give effect to the testimony of the carrier, the letter carrier, who substantially said that he knew no one by the name of L. A. Fox at that address.

We also have this very significant fact: None of the L. A. Fox checks—and you may examine each and every one of them—will disclose that at any time was a deposit made to an account in the name of L. A. Fox. Inference: there is no such bank account in existence.

2826

And I think that all of these facts readily lead to the inference that L. A. Fox is a nonentity, is a ficticious individual.

Going from that step, I think it is only fair that we analyze the checks of L. A. Fox to see where they flow, to whom did they go. And what to do you find? They are eventually deposited in the account of Daisart Sportswear or the account of George Smith, or they are cashed by Philip Faver or Barney Levine.

We have in evidence a certified copy of the certification of the Banking Department which is to the effect that Philip Paver is a check casher. Now in that connection it is interesting to observe this: Lendenmann, whom you will recall was doing business as Len Crest—he resides somewhere in Jersey, I think he described it as Greenwood Lake, or a district nearby—he described transactions which were had directly with him by an individual known as Joe Sadella. You may recall that on cross examination he was asked rather pointedly: Who is he? Where did he see him? And so forth and so on. 2827

Joe Sadella sells merchandise to Lendenmann and Lendenmann issues his checks. What do we observe? Checks are issued, one to L. A. Fox, and the other to Albert J. Deeb. We also observe that this Joe Sadella has in his possession invoices bearing the imprint L. A. Fox, and also invoices having the imprint of Albert J. Deeb. 2828

Those invoices were not obtained from any source whatsoever. They came from someone, and that someone, I submit to you, must have been identified with the individual into whose account these checks eventually came. 2829

And in the check made payable to L. A. Fox, lo and behold, George Smith deposits it to his account. And in the case of the check payable to Albert J. Deeb, he deposits it to his account.

So that you have in this particular case one individual who is dealing with regard to transactions which tie in both Daisart or George Smith or both with Deeb. Of course that is not a coincidence which

is explained by accident under the circumstances of
2830 this case.

We then have another coincidence. You may recall the representative of Raymodes and Ray Robes. He testified to representing firms which do an aggregate business of something in the neighborhood of four million dollars a year, and his testimony substantially is that he had those transactions which related to the purchase of textiles with Deeb. In connection with those transactions he received invoices which bore various names, among them Deeb, Fox, Howard.

2831 You will find in that case, upon an examination of the checks issued, that they eventually came into the account of George Smith or Daisart, or Deeb, if the invoice was in the name of Deeb.

You will also find that L. A. Fox checks which were delivered in connection with those transactions as to which Deeb is identified, they also eventuated in part with the check casher or with Daisart or Smith, as the case may be. The same substantially was true of the transactions had with regard to Ray Robes, and as to those transactions the same witness took
2832 care of the purchasing for that particular firm, and substantially what I have said as to Raymodes applies to Ray Robes.

Now let us examine the mythical George Howard. An examination of the Howard invoices discloses 230 Fifth Avenue, telephone Murray Hill 3-1349, and there again we have the testimony of the telephone company to the effect, and that is supported by the records of the telephone company, that at that ad-

dress and under that telephone number there was no listing for George Howard, but there was a listing for Barney Levine, Barney Levine being one of the names appearing on the checks that were cashed. 2833

Furthermore, we have the testimony of the carrier who said that there was no such individual as George Howard at 230 Fifth Avenue known to him during that period.

From that and from the further fact that in no case was any check payable to George Howard ever deposited to an account bearing that name, we submit that it is fair to assume that George Howard was a non-existent individual. 2834

And there again, if you will examine the George Howard checks, you will find the same identical trend as you find in connection with L. A. Fox checks. They gravitate into the account of George Smith, of Daisart Sportswear, or you find in some cases that they have been cashed at one or the other of Philip Raver or Barney Levine.

And, as I have indicated to you heretofore with regard to George Howard's invoices, the testimony is quite clear that those invoices in many cases emanated from the defendant Deeb. 2835

Now we get down to the question of direct sales; that is, sales which relate to transactions having personal relation to George Smith of Daisart Sportswear. As on that score there was submitted to you the testimony of Sandhaus, whose integrity was not questioned and who testified to numerous transactions had with George Smith personally, resulting in checks, in every case, which were deposited to George

Smith's account, Daisart Sportswear account, and
2836 Daisart Manufacturing Company account.

We also had the testimony of Joe Wolfe. Now Joe Wolfe, if you recall, was the individual who bought merchandise after negotiating with George Smith and who was unable to obtain any invoices because Smith wanted an additional payment for invoices. Joe Wolfe was a sorry individual. Under pressing cross-examination he admitted that he had become involved in OPA violations, but that he had those transactions cannot be doubted because that is corroborated by independent testimony of the kind
2837 which cannot be assailed or doubted.

You may recall that in the course of his examination—

The Court: Does any juror want a recess at this time?

A Juror: I would like to?

The Court: We will declare a ten-minute recess. You do not mind, Mr. Rudykoff?

Mr. Rudykoff: Not at all.

(Short recess.)

2838 Mr. Rudykoff: We left off at a time when we were upon Joe Wolfe, and I was about to direct your attention to what I described as conclusive corroborating testimony. And you may recall the testimony of Joe Wolfe was that in the absence of invoices he finally secured a listing of case numbers and yardages, and that is in evidence as Exhibit 39, and that is on the stationery of Mayflower Shop.

You may recall the testimony of the Eagle Printing Company, Mr. Berkow, and he testified in no uncertain terms that he had printed that stationery for George Smith, and that appears in 131-A in evidence, which is addressed to Mayflower Shop, 64 Bloomfield Avenue, Verona, New Jersey. 2839

There we have external corroboration of the character which it is almost impossible to assail: the stationery printed by or for the account of George Smith, utilized by George Smith, to list yardages, and turned over to Mr. Wolfe.

It would be very difficult to conceive of a situation which is more definite, and I can for the moment think of no other situation except perhaps a photograph with sound film indicating that the transaction took place. There can be no question about that. 2840

So regardless of what you might think about Joe Wolfe personally, that transaction took place.

We also, as far as direct connection of Smith with the sales which are here involved, have the testimony of Cindy Frocks, and that there was no intent to attack the integrity of Cindy Frocks.

The testimony in that case related to fairly substantial transactions. In that case, if you recall, you had testimony of the individual who was lame and who had a cast on his leg, and he testified in no uncertain terms to the effect that he had transacted his business with George Smith. So that the involvement of George Smith personally is directly shown by evidence which is fairly conclusive and has been heard by you and is corroborated by documentary evidence. 2841

2842 Mention has been made about Mr. Elson of Belmont. There again I say that regardless of the individual, the documentary evidence shows one, that he had transactions with George Smith; two, that the materials were sold; three, that the proceeds were deposited to Daisart's account or George Smith, and that is demonstrated by the checks which, of course, you are at liberty to examine if your recollection does not serve you.

There cannot be any question about Daisart's depositing those checks and that can be seen by a superficial examination of the checks involved, and

2843 these relate to the Belmont transactions.

So the fact that the individual may be questionable—and I do not say that he is, but I am willing to concede it for the purpose of my argument at the present time—the fact that he may not meet with your approval does not in any way detract from the fact that these transactions were had and that the benefits of the transactions, the money, the proceeds, were received by George Smith and deposited to his or to the account of Daisart Sportswear, Inc.

2844 There has been some testimony which indicates that in some cases there was an attempt to inflate the yardages relating to particular transactions, and there I recall to you again the testimony of Mr. Lendenmann from New Jersey, and the transactions with regard to which I indicated to you two checks, one payable to Deeb, which he deposited to his account, and one payable to Fox which eventually was deposited to the Daisart account.

Now, in that case you will recall his testimony was that on the first transaction he was submitted 2845
an invoice which inflated the yardage and reduced the price, but the net price was the price agreed upon, and there we have concrete evidence of an attempt to conceal the over-ceiling effect of the transaction.

And then again you will recall the testimony of Elson of Belmont to the effect that he was unable to obtain an invoice for the proper amount and therefore he had to substitute his own, and his checks, of course, substantiate the fact that he did pay the amount involved. 2846

And then, of course, you have the testimony of Wolfe, who said he did not have an invoice because he was unable to get it without paying three cents additional per yard, and in that case there were no invoices furnished because of the stated reason. There again is an attempt to not record the transaction in so far as it was possible.

Now as to concealment and attempts to hide, of course, the most obvious attempt was with regard to the books and records of Daisart. I have indicated to you what a terrific and gigantic task was 2847
presented in attempting to trace these materials to the ultimate buyers, and that was so because at the point where the records were supposed to be kept by the corporation under regulation and statute, they were not there—these records relating to piece-goods sales.

And, first, as I have indicated to you previously, when Berman in August of 1945 attempted to locate records, he was not furnished records with relation

to these sales—that is, piecegoods sales. He said so
2848 specifically. There were no records concerning any piecegoods sales.

Then we have the proposition that as to checkbooks, the checkbook exhibited on that occasion—I am speaking now of August 1945—was a checkbook of the First National Bank, and here the testimony of Berman was as follows:

"Q. Now, with regard to payments, what records did he have? A. He had a checkbook.

"Q. Do you recall on what bank? A. I do not, but I believe my report would have it.

2849 "Q. Refresh your recollection. A. The First National Bank & Trust Company of Montclair, New Jersey.

"Q. Did you see at that time cancelled checks? A. I did.

"Q. Did you see any other records relating to payments made by Daisart Sportswear, Inc.? A. I did not.

"Q. Did you examine the cancelled checks? A. I did.

"Q. As a result of that examination what did you
2850 find in connection with any other bank account? A. Upon examining the endorsement of one of the checks I found that Mr. Smith, that is the Daisart, maintained another checking account or another bank account with the Fidelity Union Trust Company in Newark, New Jersey."

Now the Fidelity account was an account that related to Daisart Sportswear, Inc. and it wasn't a trivial account. It was a substantial account. And

certainly, those records would have been of great assistance to the investigator had he had them at hand. The fact of the matter is that they were not at the place of business of Daisart. 2851

Exhibit 139 in evidence shows the substantial nature of the account of Daisart Sportswear. So that from its nature and its extent, and it runs into very substantial figures, which you can examine if you care to—the daily balances in some cases would be as high as $100,000—the very omission to have that record present at that time when the War Production Board representative was there is very material evidence with regard to concealment. 2852

But we have the additional fact that even if all of the Daisart books had been present, they would still not have disclosed the true situation, because as has been directed to your attention time and again, proceeds of the sales of these goods were deposited to his personal account time and again. So that his records, that is, the Daisart Sportswear Inc. records would not have revealed the true situation. Of course that is not consistent with a provision which requires that you keep full and accurate records relating to purchases and sales of materials of this kind. 2853

Now we have examined at length the circumstances incident to the 784,000 yards of material which were the subject of the analysis which is in evidence as 158. Why are those circumstances material? The answer is this: we find that the 784,000 yards were bought by Daisart for the sum of $230,000, and they were sold to various manufacturers

for prices which aggregate $477,000, a difference
2854 of about $247,000.

That, of course, is clear from the schedules which are in turn based upon the documents in this case.

With regard to that portion of the schedule which relates to direct sales made by Daisart or George Smith, the overage, of course, is an overage which redounded to his or the corporation's benefit directly. And you will see and you have seen from time to time during the course of the trial that those direct transactions were substantial. So, at least in the case of those transactions the entire monetary
2855 benefit redounded to George Smith, and that ranged from 14 to 44 cents per yard above the cost to Daisart.

Now with regard to the other transactions, in each case—and that is true without exception—in each case there was a price violation. Whether it involved Daisart directly or involved Dech or involved any of the other individuals named, there was a price violation.

We do not charge the defendants with the individual price violations. The Government merely
2856 charges that these defendants were banded together with the purpose of violating the Price Control Act, and that these various transactions are circumstantial evidence indicating that agreement. It is not incumbent upon us, although I think we have established it by substantial evidence, that these individual defendants did benefit by specified amounts. It is enough for the purpose of motive that you have in this case evidence which shows

that directly by reason of the deposits in the Deeb account, by reason of the deposits in the Daisart 2857
account and the George Smith account, that there was substantial monetary advances, and we do not at this time propose to undertake the obligation of stating to what extent each of the defendants benefited. It is enough if they did benefit, and the extent of the benefit is, of course, immaterial for the purpose of establishing our charge of conspiracy.

If there be any question about the fact that there was knowledge on the part of Daisart and all those involved in this case with regard to the limitations upon the price of sales, we have only to turn to 2858
147-A, and we find at page 13, in behalf of the corporation, the following:

"Q. Can you tell me how Daisart Sportswear Inc. arrived at its selling price with respect to the items that it sold? A. Since it was surplus, it was sold at the price billed to me plus freight and haulage and less discount allowed to me.

"Q. In other words, Daisart Sportswear Inc. sold at cost plus freight less any discounts, cash or otherwise, received by Daisart Sportswear, Inc.? A. Correct."

2859

It was almost clear to a certainty that the limitation with regard to price was within the minds of the individuals here, but I say we go one step further: we are not limiting ourselves to cost. Add to it, if you will, the so-called jobber's mark up, and that substantially amounts to 12 per cent of the selling price, and there you find, if you give Daisart

2860 the benefit of a legitimate legal enterprise as a jobber, that the excess was $215,000 and that the overage per yard would result then to about 27 cents per yard.

So we are not concerned here with a technical violation—it is a substantial violation.

Of course, at this time I should not doubt if you inquire, what did Deeb have to do with these transactions?

I have indicated to some extent what his involvement was, but, briefly, I will state in addition these transactions:

2861 First, you will recall that he was identified as the individual who was directly responsible for placing the orders with Fine Goods Sales and Marvlo. And in the case of one of the orders placed with Fine Goods, which is Exhibit 67, the yardage involved was 1,050,000 yards.

Exhibit 67 is dated March 21, 1945 and sets forth yardages which aggregate 1,050,000 yards, and which the representative of Fine Goods Sales stated in no uncertain terms was physically delivered by Deeb.

2862 Of course if that was all there was to the case I would agree with counsel for the defendant Deeb that there was no criminal involvement. If we take into consideration the other orders which were connected with Deeb, and those of the Fine Goods and Marvlo orders, we have an aggregate of 1,630,000 yards involved, which is a pretty substantial portion of the yardage here involved.

We also find, however, that Fine Goods' material with which Deeb was directly connected was sold by

him to Keats. You will find that that is indicated by the schedules with regard to count 22. Keats, you will recall, is the individual who admitted to transactions with Deeb but eventually disavowed that he and Deeb had contact with relation to Fox or Howard. 2863

There is a situation where goods for which Deeb is responsible for by reason of placing the orders is sold by him to the ultimate manufacturer.

Then we find also that Marvlo goods—that is, goods purchased from the Marvlo Company as a supplier, is eventually sold by Deeb to Ray Robes and Raymodes, and which is described in count 23 and count 29. And in that case the representative of Raymodes not only identified Deeb as having sold the materials represented by the invoices in his name but also identifies him as having something to do with the materials described in the other invoices of Fox and Howard. Those invoices relate to Marvlo material, as is demonstrated by the analysis in count 29. 2864

Then we find that in addition to that Deeb sold material which emanated from Meadtex. And if you want any further evidence of direct connection with Daisart, I refer you to Exhibit 120, and that relates to a transaction had with Sandhaus. 2865

In this case, the Sandhaus transaction, the testimony is that Sandhaus dealt with Smith directly and there was no direct meeting between Sandhaus and Deeb. Nevertheless, in connection with the transaction that involved Smith and Daisart, and materials which were described in that transaction,

2866 we find in Exhibit No. 120 a letter dated July 23, 1945, addressed to Allied Textile Printing with relation to what was to be done with the material and signed "Daisart, Inc., A. J. Deeb."

So that the connection of Deeb with this entire conspiracy is more than casual. His personal benefit is easily established and can be easily traced through an examination of these schedules, where you will find that checks for the proceeds of materials were deposited to his account.

You may recall that he had one account in Mahopac and another account in West Hartford, but those 2867 were checks traceable to the proceeds of materials which were part of this conspiracy.

Now, we also say that in the case of Deeb his involvement is also traced to the priorities and the diversions which resulted in materials which eventually are accounted for in this schedule, because that was material which was used for the purpose of the conspiracy.

He may not have personally had anything to do with the purchase of materials, other than those involving Fine Goods or Marvlo, but he must have known and therefore have approved of the method 2868 of obtaining those materials by the utilization of these priorities, because in the Fine Goods cases and in the Marvlo cases he was also using the rated priorities. So that all of the materials traced into this pool of materials, as to which a tracing has been successfully made, necessarily involved materials which emanated from the suppliers, as to which purchases were made, and as to which we claim by

reason of this general plan and general conspiracy he undertook to become part—and a conspiracy is nothing more than an agreement that we shall do certain things. 2869

It does not mean that one may not be responsible for things done by a co-conspirator. Everything that is done pursuant to that conspiracy is the act of every conspirator. And by the very nature of a conspiracy, one must become—because it is within the general concept of a conspiracy—must become responsible for a good many acts, a good many transactions, with which he physically, actually and personally is not connected by testimony. 2870

And we say that with regard to the eleven other counts which do not involve his delivery of orders, there was a connection established by reason of the fact that those materials were utilized for the purpose of the conspiracy.

Now in every conspiracy there is a requirement that an overt act be established within the jurisdiction of the Court, and for the purpose of that compliance we need only establish one act, I direct your attention to overt act No. 1 which lists a number of transactions had at 18 East 31st Street, which is the address of J. F. Keats, and particularly to the one dated May 26, 1945 and the one dated June 10, 1945, which are supported by invoices bearing those dates in the case of Deeb, and which by the testimony of Keats, places him at of about the address indicated here within the Southern District of New York. 2871

2872 And if there be any necessity for any further overt acts within the district, I refer you to the testimony of Raymodes whose address is 105 Madison Avenue, a reference to which is made in paragraph 3rd of the overt acts, and you will find that in connection with transactions which concern themselves with Deeb directly, there were invoices dated April 16, July 30, August 6 and August 7, 1945, bearing out the allegation that Deeb was at the addresses indicated.

Since we only have to establish one overt act, and that overt act binds all of the conspirators, we sub-
2873 mit that that has been complied with.

Now, there has been—and I shall not be very long—throughout this trial and throughout summation, there have been directed to you arguments which are addressed to the possible violations of others. I recognize their validity to a certain point, and that point is this:

That you may take into consideration the fact that the individuals in question may not be entitled to credibility because they have been involved in certain violations. But when the argument is pressed
2874 further beyond that and is in effect that you should not find these defendants guilty because there are many other violators of the law, it then becomes a very vicious argument. It may not be made in fact but it may be implied from what is said, and I call that to your attention so that you may deal with it appropriately in all fairness to the Government and in all fairness to the defendants.

In so far as the arguments are addressed to cred-

ibility, I have no quarrel with that. But when it goes beyond that and by implication asks you to absolve these defendants because of the guilt of any others, you are being invited to violate the law yourselves. Of course, under no circumstances can you recognize that as a just and valid argument. 2875

And I say that in so far as credibility is concerned, the credibility of the witnesses to whom reference has been made has little if anything to do with the force and effect of the evidence submitted in this case, which is almost entirely documentary evidence, and, so far as I can see, the documentary evidence has not been impeached one whit. 2876

In finality I would call your attention to this: these defendants created a situation: they first obtained these materials by violating the law, by extending these priorities, by representing that they were to be used for an effort directly related to the war: the preparation of ammunition bags which were to be used to filter the powder which in turn was to go into the war effort.

Having obtained these materials at ceiling prices, they created a black market in these materials. They do not have the benefit of the mitigating fact and circumstance which is present in many cases, and that is that they had to buy at black market; they bought at ceiling. They created the black market. And if viewed at from that circumstance, any reflection upon the trials and tribulations of certain business men who were unable to obtain materials, is entirely besides the point. 2877

They obtained these materials at ceiling by exercising priorities which they had no right to exercise,

and they diverted these materials into the black
2878 market at invalid prices and created the black market in so far as these materials are concerned.

At this time the case is in your hands as far as I am concerned. I have attempted to bring to bear such evidence as the Government has relevant to the facts in this case, and I submit to you that your verdict, if it is to be based upon fact, must be one of guilt as to all defendants and as to all counts, not because the evidence shows beyond a reasonable doubt their involvement, but because it shows beyond any possible doubt whatsoever that they were guilty
2879 of these offenses.

The Court: We will take a five-minute recess and then the Court will charge the jury.

CHARGE OF THE COURT

The Court: (Ryan, *J.*) The presentation of evidence in this trial has been completed; the summations of the respective counsel have been made. It now becomes the duty of the Court to instruct you on the law which must govern you in your consideration of the evidence in this case.

The Court desires to thank you and commend you for
2880 the punctuality of your attendance, and for the conscientious attention, which the Court observed you paid to the testimony and to the witnesses.

The Government and the defendants have been ably and skillfully represented by competent and experienced members of the Bar, who have conducted themselves in accordance with the highest traditions of the legal profession.

You are required to take the law from the Court, and the only law that you are to apply to the facts in this

case is the law expounded by the Court. If you have any notion of your own as to what the law should be you are 2881
bound to disregard your notion and to accept the law as the Court enunciates it for you.

You are the sole and exclusive judges of the facts. Your recollection of the testimony must prevail, not that of the Court or of counsel for either side. You must use your common sense and good judgment and give to the facts introduced in evidence a common sense interpretation. You should use the same common sense and good judgment in this case as you would use in the serious business affairs of your own lives. You must be cool, calm, impartial and discriminating. You must be animated by an abiding sense 2882
of justice and a desire to maintain the integrity of the law and to accomplish justice.

The defendants Daisart Sportswear, Inc., George Smith and Albert J. Deeb are brought to trial to answer the charges contained in two informations and one indictment, which have, by order of the Court, been tried at one and the same time.

The informations and the indictment are not evidence, and the fact that they have been filed against these defendants is not in any way to be considered by you in determining their guilt or innocence. The informations and the indictment are merely accusations and are simply the 2883
medium or means by which the defendants are brought into court to be tried.

All of the defendants have entered pleas of not guilty, and by that plea all of the defendants have placed in issue every material fact constituting the crimes charged.

One of the defendants, you have observed, is a corporation, Daisart Sportswear, Inc., created and existing only

in law and having no corporeal existence. You will judge
2884 of the innocence or guilt of this corporate defendant in the same manner in which you do of the other defendants, and apply to that task the same rules of law and the same judgment on the evidence. A corporation, since it can act only through its officers and authorized representatives, must, of course, have its guilt or innocence determined by the acts of its officers and its authorized representatives.

You are to be mindful of the fact that three defendants are being tried at one time. You are to be careful to consider and determine the guilt or the innocence of each defendant separately and to render separate verdicts as
2885 to each defendant. In your consideration of the evidence you must keep that constantly in mind.

Under our law, all persons charged with the commission of crime are presumed to be innocent until their guilt has been established by competent evidence beyond a reasonable doubt. When a person is charged with the commission of a crime, he is not bound to prove that he did not commit that crime, but the Government must prove beyond a reasonable doubt that he did commit it.

Each defendant is entitled to rest upon the presumption of innocence in his favor.

Neither of these individual defendants took the witness
288[illegible] stand to testify as a witness in his own behalf; and no officer or agent testified on behalf of the corporate defendant. A defendant may testify as a witness on his own behalf, but his neglect or refusal to testify does not create any presumption against him, and his failure to so testify should not be considered in determining his guilt or innocence.

The burden of establishing the guilt of each of these defendants beyond a reasonable doubt rests upon the Government, and that burden never shifts. 2887

This presumption of law inures to the benefit of all defendants charged with crime. It was designed for the protection of the innocent. It was not intended as a bulwark behind which the guilty might hide. If, however, the Government produces evidence which rebuts the presumption of innocence, and if the evidence convinces you of the guilt of a defendant, beyond a reasonable doubt, then the presumption of innocence ceases to exist as to that particular defendant.

A reasonable doubt is a doubt based upon reason. It is a doubt for which a juror who says that he has a doubt about a defendant's guilt can give a reason for entertaining. 2888

A reasonable doubt is not a mere guess or surmise that a defendant may not be guilty. It is not a doubt based upon a whim, caprice, prejudice or sympathy, or the reluctance of a juror to perform a duty. It is a doubt that must arise from the evidence or the lack of evidence in this case.

If you are satisfied, in view of the law as the Court has given it to you, that the defendants are guilty of any of one or more of the crimes charged, you may say as to that particular defendant or defendants and as to that particular charge, you have been convinced beyond a reasonable doubt. If your mind is wavering, or if you are uncertain of the guilt of any of these defendants, you have not been convinced beyond a reasonable doubt and must render, as to that particular defendant or defendants, a verdict of not guilty accordingly. 2889

2896 Both of the informations, which were filed against the defendants on March 31, 1947, charge and allege in 41 counts, violations of Section 301 of the Second War Powers Act, Title 50, United States Code Annotated, Appendix Sec. 633 and Priorities Regulations Nos. 1 and 3. That one or more of the statutes and regulations have or may have been repealed is of no materiality. You are to decide this case as if all of the statutes and regulations, to which your attention is directed, are in full force and effect.

I shall not read the statute or the regulations at length, but I shall try to give you their substance, and I shall read parts of them to you.

2897 This statute was enacted and these regulations were adopted in the interest of the National Defense during the National Emergency which existed for a number of years. They were intended to control, limit and regulate the use of certain materials which were vital to the armed forces, and to give deliveries of such materials, for use in connection with Army and Navy contracts, priority and preference over all deliveries for private account.

All of the materials set forth in the information, that is, cotton and rayon goods, were materials of the type covered by this statute and by the regulations in question.

2898 The statute further provided that deliveries under Army or Navy contracts might be assigned priority over deliveries under any other contract or order, and further that any person, including a corporation, who knowingly and wilfully performs any act prohibited or knowingly and wilfully fails to perform any act required by a regulation adopted and promulgated pursuant to the statute shall be guilty of a misdemeanor. Pursuant to the statute the War Production Board was created and came into existence and there were duly promulgated certain regulations.

There were duly promulgated regulations known as Priorities Regulations No. 1 and No. 3. The Government 2899
in the informations charges the defendants with wilfully and knowingly violating the provisions of these regulations.

Priorities Regulation No. 1, by Section 944.5 provided among other matters, for the sequence of preference ratings and declared that "Preference ratings in order of precedence are AAA, AA-1, AA-2, AA-2X, AA-3, etc." and "that the letter 'X' after a numeral indicates that such rating is inferior to the rating of the same numeral and superior to the rating of the next numeral", for example, priority rating AA-2X is inferior to AA-2 and superior 2900
to AA-3. The regulations further provided that any person who obtains materials by the use of such priorities must, if possible, use or dispose of such material for the purpose for which the priority was granted.

Priority Regulation No. 3 provided in Section 944.23 that a person—and the term "person" of course includes a corporation—may use the rating to get only that quantity and kind of material named in the order, and if the quantities of materials are not stated in the order it may be applied only to get the minimum amount needed, and it further provided that "no person may place rated orders for more materials than he is authorized to rate even 2901
though he intends to cancel some of the orders or reduce the quantity of material ordered to the authorized amount before it is delivered.

The regulations did, however, provide, while any person who gets materials with priorities assistance must, if possible, use or dispose of it for the purpose for which the assistance was given. If the materials can no longer be

2890 The Government is not required to prove the guilt of a defendant beyond all possible doubt, or to a mathematical certainty, because such measure of proof is oftimes impossible in human affairs.

You are the sole and exclusive judges of the credibility of each and every witness. The Court has already told you that you are the exclusive judges of the fact in the case; likewise you are the exclusive judges of the credibility of witnesses, that is, of the trustworthiness of the witnesses who have taken the stand. You have observed them and you have heard them.

2891 If it appears from the evidence that any witness has committed a crime or aided in the commission of a crime, whether it be a crime charged against these defendants or any other crime, the jury may take that fact into consideration in determining what weight it should give to the testimony of that witness.

The evidence does disclose the activities of various persons other than the defendants. Whether these persons or any of them, or any of the persons who have testified as witnesses, were guilty of participation in the conspiracy here alleged is of no concern to you except in so far as their activities have a bearing on the guilt or innocence of the defendants of the crimes charged and as such participation may bear on the weight or credibility of their testimony.

2892 It has always seemed to the Court that when a witness takes the stand his individuality and his personality become apparent. It is for you to say wherein the truth is and what witnesses have told you the truth. You are to ask yourselves what motive a witness has in testifying in the manner in which he has.

If you find that any witness has deliberately and wilfully lied with respect to any material fact you can follow either 2893
one of two courses: One, you can accept so much of the witness' testimony as you believe, and reject that which you do not believe; or, two, you may reject the whole of the witness' testimony.

There were several witnesses who testified as to the good character of the defendants. The law provides that character evidence may of itself create a reasonable doubt, where, without it none would exist. The reason for this rule is based upon the reasoning that a man of good character is not as likely to commit a crime as a man of bad character; and if a man has always borne, so far as 2894
the world knows, a good character, he is entitled to the benefit of it and to have it considered by the jury.

Yet, our everyday experience teaches us that many men, supposed to have been possessed of good character, have committed crimes. It does not necessarily follow that because a man has borne a good reputation in the community, he may not be guilty of the crime with which he is charged.

Evidence of good character should and must be considered by you and you will give such weight to it as you, in view of the other evidence in the case, feel it is fairly 2895
entitled to receive.

The fact that the Government has called many witnesses and the defendants but few is immaterial. You are to concern yourselves with the quality and not the quantity of testimony.

Bearing these principles of law in mind, you will now carefully consider the two informations filed against these defendants, and the evidence offered on the trial.

used for such purpose, the holder may himself use or
2902 dispose of it for any purpose for which he has the necessary rating.

The regulations provided that, one, when he applied or extended a preference rating must place on the order and sign a prescribed form of statement or certification. This is the certificate which appears on many of the exhibits which were received in evidence and read to you. It contains two important representations by the one purchasing these restricted materials: the first, that the purchaser "is entitled to apply or extend the preference ratings indicated opposite the items" on the order; and the second,
2903 "that such application or extension is in accordance with Priorities Regulations 3". It also contains the important statement that the purchaser is familiar with the terms of the regulations.

In substance, then, these are the applicable parts of the statute and regulations, the violation of which is charged to the defendants in the two informations now before you.

The first information, which is numbered C-125-239, charges violations of this statute and of these regulations in respect to the application and extension of preference ratings. Specifically, it is charged, and with what force
2904 and effect it is for you to say, that these defendants, acting jointly and together, as confederates, each aiding and abetting the other, unlawfully, wilfully and knowingly bought and purchased by the use of priority ratings certain cotton and rayon materials, and that such purchases were neither necessary, nor required in the carrying out and performance of the Army and Navy contracts, for which such priorities had been granted.

This information contains forty-one separate and distinct charges or counts. The Court has dismissed charges 2905
or counts numbered 8, 15, 33 and 38 as to all defendants, and as to the defendant Albert J. Deeb only, the Court has dismissed the additional counts numbered 2, 4, 5, 6, 7, 9, 10, 13, 14, 16, 17, 18, 19, 20, 21, 25, 26, 34, 35, 39, 40 and 41.

You will have before you for your consideration the original informations filed against these defendants which will contain endorsed on the back the notation of the Court's action with respect to each of these informations. You will also have before you a schedule that will show the disposition of the Court's action with respect to these 2906
counts.

With respect to these counts, as to the defendants as to whom they were dismissed, you are not to concern yourselves, nor in any manner or in any way consider the fact that the information included such counts, in determining the guilt or innocence of the defendants on the remaining counts or charges which the Court is submitting to you for your consideration.

The counts in this information which are submitted to you are as follows:

With respect to Daisart Sportswear Inc. and George 2907
Smith and Albert J. Deeb, count 1, which concerns an order from A. Steinam Company of December 13, 1944, for 50,000 yards of cotton goods of AA-2X priority.

Count No. 2, concerning all the defendants, on an order of A. Steinam Company of December 15, 1944, for 20,000 yards of cotton on AA-2X priority.

Count No. 3, as to all defendants, on an order from A. Steinam Company of December 20, 1944, for 75,000 yards of cotton on an AA-2X priority.

2908

Count No. 4, concerning only Daisart Sportswear and George Smith, on an order of A. Steinam Company of January 10, 1945, for 25,000 yards of cotton goods on AA-2X priority.

As to these two defendants, Daisart Sportswear Inc. and George Smith, count No. 5, on an order of S. Eisenberg, dated January 17, 1945, for 100,000 yards of rayon goods on priority AA-2X.

2909

As to these two defendants, excluding Deeb, on count 6, on an order of S. Meadtex of January 26, 1945, for 30,000 yards of cotton goods on an AA-2X priority.

As to the defendants excepting Deeb, on count 7, on an order of L. Lazarus of February 7, 1945, for 50,000 yards of cotton goods on an AA-1 priority.

And so the various counts run, and you may observe the counts with the particular details of each count from the copy of the information which will be given to you and from the schedule which the clerk has prepared and which will be given to you to assist you in your deliberations.

2910

The second information, which is numbered C-125-240, which charges violations of the same statute and regulations, as set forth in the first information, but in this information the violations charged are in respect of the use of materials obtained by the application and extension of the priority ratings.

In substance, the first information charged unlawful application and extension of priority ratings in order to obtain materials. The second information charges the unlawful use of the materials so obtained. 2911

The second information also contains 41 separate and distinct counts. The Court has dismissed charges or counts numbered 8, 15, 33 and 38 as to all defendants. As to the defendant Deeb only, the Court has dismissed the additional counts numbered 2, 4, 5, 6, 7, 9, 10, 13, 14, 16, 17, 18, 19, 20, 21, 25, 26, 34, 35, 39, 40 and 41. The action of the Court will appear and be presented to you and given to you recorded in a schedule which the clerk has prepared, which will be submitted to you to take with you to the jury room along with a copy of the information. 2912

As to these counts concerning which the Court has taken action resulting in the dismissal of those counts you are not to concern yourselves, and you are not in any manner to be influenced by the fact that some counts which were made were dismissed and that others were not dismissed. You may refer to the copy of the information concerning the details of the counts which the Court is submitting to you on this second information.

You will note that it is charged in both of these informations that all three of the defendants were aiding and abetting one another, in the first information, in the unlawful application and extension of these priorities; and, in the second information, in the unlawful use of the materials obtained, and that in doing so they were acting in concert and in furtherance of a common design and purpose. 2913

The law provides that "whosoever directly commits any act constituting an offense defined in any law of the United

States or aids, abets, counsels, commands, induces or pro-
2914 cures its commission, is a principal".

Any person concerned in the commission of a crime, whether he directly commits the act or acts, constituting the offense, or aids and abets in its commission, and whether present or absent, is a principal. All persons acting together in the commission of a crime are principals.

When two or more persons engage in the commission of a crime, all are equally guilty in the eyes of the law, regardless of the particular act or acts which they commit during the existence of the scheme to commit the crime charged.

2915 The Court has told you that if a person aids in the commission of a crime, whether present or absent at the consummation, he is a principal. The word "aid" includes knowledge of the wrongful purpose of the perpetrator and of counsel and encouragement in the crime.

Where parties act in concert in a conspiracy, their acts are evidence against any one of their number, provided such acts are done in the course of the carrying out of the conspiracy, and each conspirator is liable for the acts of every associate, done in the effort to carry the conspiracy into effect.

2916 During the trial, various exhibits and testimony of conversations and transactions were offered in evidence by the Government and were received by the Court over the objection of the attorneys for the defendants. The weight to be given to these exhibits and testimony is for the jury to determine.

When considering the testimony of each witness and each exhibit, you will ask yourselves the question, "Did the defendants, or any of them, agree and conspire, aid

and abet one another in the commission of the crime charged?" If you answer that question in the affirmative 2917
and are so convinced beyond a reasonable doubt, then inquire, "was the act, conversation or transaction had in the course of the carrying out of that agreement and the accomplishment of its purpose?" If you find that it was so done, and are so convinced beyond a reasonable doubt, then you may consider such evidence in determining the guilt or innocence of any and all of the defendants who you are so convinced beyond a reasonable doubt knowingly participated and conspired to violate the law, as charged.

A conspiracy may be proved, as other facts are proved, 2918
by circumstantial evidence. Parties performing disconnected acts, all contributing to the same result, may, by the circumstances and by their general connection, be satisfactorily shown to be conspirators and confederates.

When, on a charge of acting in concert and together and in furtherance of a common design and purpose, it appears that two or more persons by their acts are pursuing the same object, and often by the same means, the one performing part of an act and the other completing it for the attainment of the object, the jury may draw the conclusion that the parties are acting in concert and together and that there is a conspiracy.

The Government has offered no direct proof of a meeting 2919
or a consultation of the defendants for the illegal purposes charged. The Government seeks to show that these defendants were acting in concert, aiding and abetting one another, by circumstantial evidence. Men who agree and conspire to commit a crime do not, as a rule, call in witnesses to participate in their conferences and talks. It is, therefore, from the very nature of the charge ofttimes

necessary for the Government to resort to proof of circumstances.

2920

Now, what is circumstantial evidence? Evidence may be said to be of two kinds, direct and circumstantial. Direct evidence is where a witness testifies of his own personal knowledge of the main fact or facts to be proven. Circumstantial evidence is proof of certain facts and circumstances, from which a jury may infer other and connected facts, which usually and reasonably follow according to the common experience of man.

Circumstantial evidence means simply that you take one fact that has been seen, that is produced before you by the evidence, and from that fact you reason to a conclusion.

2921

Evidence is direct and positive when the facts in dispute are sworn to by those who have actual knowledge of them by means of their senses. It frequently happens that to obtain the truth of a situation it is necessary to use other modes of evidence than that of direct testimony, provided such proofs may be relied on as leading to safe and satisfactory conclusions.

No greater degree of certainty is required where the evidence is circumstantial than where it is direct. In either case, the jury must be convinced of the defendant's guilt beyond a reasonable doubt. You are bound by your oath to render a verdict upon all of the evidence and the law makes no distinction between direct evidence of a fact and evidence of circumstances, from which the existence of a fact may be inferred.

2922

While circumstantial evidence should be considered by the jury, in determining the guilt or innocence of the defendants, no conviction can be had unless the circumstances are not only consistent with guilt but inconsistent

with innocence. The facts constituting the circumstantial evidence must exclude to a moral certainty every hypothesis of innocence. If the circumstances are equally consistent with innocence as with guilt, the defendants must be acquitted. 2923

The issues of fact as to the information are quite simple and plain.

When considering the first information, that is Information C-125-239, in the juryroom, ask yourselves these questions: "Did these defendants agree among themselves to and did they unlawfully, wilfully and knowingly apply and extend preference ratings?" "Has credible evidence been presented to convince you of this beyond a reasonable doubt?" Separately apply these questions to each of the defendants and to each count of the information, which have been submitted to you: 2924

If you find that a defendant or defendants did so agree and did so act, and that is has been proved by credible evidence, which has convinced you of it beyond a reasonable doubt, then you shall return a yerdict of guilty against the particular defendant or defendants, and as to the particular count concerning which you so find and are so convinced; otherwise, as to any or all defendants and on those counts concerning which you do not so find, you must acquit. 2925

Then, come to the consideration of the second information, that is information numbered C-125-240, and ask yourselves these questions: "Did the defendants agree amongst themselves to and did they unlawfully, wilfully and knowingly, fail to utilize the goods and materials ordered and received, in consequence of an application or an extension of a preference rating for the prescribed

use and purpose?" "Has credible evidence been presented
926 to convince you of this beyond a reasonable doubt?" Again, apply these questions separately to each of the defendants and to each count of the second information which has been submitted to you.

If you find that a defendant or defendants did so agree and did so act, and that it has been proved by credible evidence, which has convinced you of it beyond a reasonable doubt, then you shall return a verdict of guilty against the particular defendant or defendants and as to the particular count concerning which you so find and are so convinced; otherwise, as to any or all defendants on those
927 counts concerning which you do not so find and are not so convinced, you must acquit.

You will determine the guilt or innocence of each defendant individually, as to each separate count submitted to you of the two informations, by bearing in mind all of the evidence and all of the instructions of the Court, both the instructions already given and those the Court will give to you.

Having done that, you will consider the guilt or innocence of the defendants of the crime charged in the indictment, and, in so doing, you will again be mindful of all of the instructions of the Court.

928 The indictment charges the commission of the crime of "Conspiring to Commit an Offense against the United States." The Court will read to you part of the wording of the law applicable in creating that crime:

> "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect

the object of the conspiracy, each of the parties to such conspiracy" shall be guilty of the crime. 2929

Conspiracy has been made a separate crime because it is believed that when two or more persons combine to commit an offense against the United States the danger to the Government from such concerted action is greater than if one person alone is involved in the agreement to commit a crime. Therefore the mere making of the agreement to commit a crime and the commission of an overt act done in pursuance of such agreement is therefore made a separate crime.

Conspiracy is a combination or joining together of two 2930
or more individuals to effect an unlawful purpose. To establish the crime of conspiracy it is necessary that the Government prove some act done by any one of the alleged conspirators to effect the object and accomplish the purpose and end of the conspiracy. This act is called an overt act.

An overt act is simply evidence that the conspiracy has passed beyond words and that it is on foot and in progress when the overt act is committed. It is an act done in execution or part execution of the conspiracy and a step taken by the conspirators to accomplish their purpose.

The overt act need not be of a criminal nature. It may be 2931
an act perfectly innocent in itself. If it is an act done for the purpose of carrying out the unlawful agreement, then the conspiracy has been committed and completed. It is unnecessary that the overt acts be in any way criminal in themselves. It is only necessary to show that some act, as charged in the indictment, was done for the purpose of carrying out the object of the agreement.

2932 Each person to be held to be a member of the conspiracy should have knowledge of the unlawful purpose sought to be accomplished and should intend to be acting with other persons in the accomplishment of this unlawful purpose. It is not necessary, however, that all of the persons taking part in a conspiracy should play parts of equal importance or activity. Anyone who acts with others in the accomplishment of the unlawful purpose knowing it to be unlawful is guilty of conspiracy, whether his activities are great or small.

2933 The indictment alleges that on or about and between December 1, 1944 and March 31, 1947, the defendants, Daisart Sportswear, Inc., George Smith and Albert J. Deeb, did unlawfully and knowingly combine and conspire and agree together and with divers other persons to violate the law, particularly the law concerning maximum price regulations, known as Regulation No. 127, and amendments thereto.

2934 The indictment sets forth that the conspiracy came into existence on December 1, 1944. A conspiracy may be of gradual development. The exact date of its origin is unimportant. It is sufficiently proved if you believe beyond a reasonable doubt that at any time subsequent to December 1, 1944, and prior to March 31, 1947, a conspiracy existed as it has been defined to you, and has been so proven to your satisfaction by credible evidence beyond a reasonable doubt.

The statute and regulations, to effect the violation of which the defendants are charged to have conspired, are known as the Emergency Price Control Act and Regulations.

The statute provided in substance that whenever, in the judgment of the Price Administrator, the price or prices

of a commodity or commodities have risen or threatened to rise to an extent inconsistent with the purposes of the act, he may establish a maximum price for such commodity. The statute further declared that a sale over and in excess of such maximum price so established shall be unlawful. 2935

The Price Administrator duly promulgated regulations, designed to carry the provisions of the statute into effect. A wilfull violation of these regulations was an unlawful act.

It is an offense against the Emergency Price Control Act to sell and deliver any commodity in violation of any regulation promulgated thereunder, or to offer, solicit or attempt to do so. 2936

Among other matters, these regulations provided that every person making a purchase, sale or delivery of finished piece goods shall keep for inspection by the Office of Price Administration, for not less than two years, complete and accurate records of each such purchase, sale or delivery, showing the date thereof, the terms of the sale, the name and address of the buyer or seller, the price paid or received and the quantity of each type, quality and finish of finished piece goods purchased and sold, and including, in the case of the seller, a record of all items necessary to verify the computation of the maximum price of finished piece goods. 2937

The regulations further provided that every seller of finished piece goods shall, with respect to each sale thereof, deliver to the purchaser either a contract or sale or an invoice which shall contain, in addition to the terms thereof, a full and accurate description of the goods sold.

The regulations define finished piece goods to include woven fabrics more than 12 inches in width, finished or

processed composed of 75% or more by weight of either
2938 cotton fibre or rayon.

The regulations defined a Class 1 purchaser to include a cutter, manufacturer or jobber and provided that the maximum price for finished piece goods on a sale by a jobber to a Class 1 purchaser is the result of dividing the actual cost by .88, and that a manufacturer was not entitled to any mark up on a resale of finished piece goods.

The indictment alleges, as the Court has already told you, that the defendants unlawfully conspired to commit offenses against this statute and these regulations, and that it was part of the conspiracy that the defendants
2939 would:

1. sell, offer to sell and deliver, in the course of trade and business, finished piece goods at prices in excess of the maximum price established therefor;

2. issue and cause to be issued invoices to the purchasers of said goods bearing the names of fictitious sellers;

3. accept from the purchasers checks drawn to the order of fictitious sellers;

2940

4. cash and cause to be cashed said checks at various check-cashing companies and banks;

5. issue invoices falsely, describing and overstating the quantity of said goods;

6. fail to keep for inspection by the officer of the Price Administration Office complete and accurate records of each purchase, sale and delivery of said goods;

7. fail to deliver to each purchaser a contract of sale or an invoice containing a full description of the finished piece goods sold. 2941

The Government must first establish that the conspiracy existed and that the acts were committed in furtherance of such conspiracy. If there is a reasonable doubt as to the existence of the conspiracy, the jury must acquit on this indictment even though there is no reasonable doubt as to the commission of the act or acts constituting a violation of the O. P. A. regulations.

When considering the guilt or innocence of the defendants of the charge in this indictment inquire, "Did these 2942
defendants conspire and agree together and with one another to violate the laws of the United States, as set forth in the indictment?" "Has credible evidence been presented to convince you of this beyond a reasonable doubt?" Consider these questions separately and as to each defendant.

If you find that a defendant or defendants did so conspire and agree, and that you have been convinced of it beyond a reasonable doubt as to that defendant or defendants you may continue your deliberations, but if you find as to any defendant or defendants that it has not been so proven, as to that defendant or defendants, you must on 2943
this indictment return a verdict of not guilty.

Continuing your deliberations, only as to the defendant or defendants, if any, who you find were part of the corrupt conspiracy and agreement, you will then come to the consideration of whether any one overt act set forth in the indictment was committed by any one of the conspirators.

The overt acts alleged in the indictment are set forth in

the indictment, a copy of which will be given to you. They
2944 begin on page 2. There are eight overt acts alleged to have been committed by Albert J. Deeb in the first paragraph, some more in the second, and then some alleged to have been committed by him in the third. There are acts alleged to have been committed by George J. Smith in the fourth paragraph, acts alleged to have been committed by George J. Smith in the fifth, and in the sixth the same.

If you find that there was a conspiracy and that any one of these overt acts were committed by any one who participated in the conspiracy, then the requirement has been satisfied.

2945 It is not necessary that the Government prove all of these overt acts, which have been set forth in the indictment. It is sufficient if the Government establishes beyond a reasonable doubt the commission of any one of the overt acts alleged, by any one of the defendants who you find was a conspirator.

Should you find that any one or more of the overt acts were done, as alleged, by one of the defendants who you have found to be a conspirator and that it has been so established beyond a reasonable doubt, then you will return a verdict of guilty of the charge in the indictment as to those defendants or defendant who you have been
2946 convinced beyond a reasonable doubt were conspirators. If you have not been convinced beyond a reasonable doubt of the commission of any one of the overt acts alleged, then you will return a verdict of not guilty on the indictment as to all of the defendants.

The fact that during the trial objections have been made by counsel for the defendants and rulings have been made by the Court overruling the objections should not be considered by the jury.

The Court has already instructed you but does so again that the fact that motions have been made by counsel to dismiss the informations and the indictment, and that these motions have been denied, simply means that in the opinion of the Court there is a question or questions of fact to be determined by the jury. The denials of these motions are not to be considered by the jury as evidence of the guilt of the defendants. 2947

The Court instructs you to disregard any statement that the Court may have made to counsel during the trial; you will likewise disregard all testimony and exhibits which have been stricken from the record; it is not evidence.

The Court specifically charges you that Exhibit 147-A, the record of the interrogation of the defendant George Smith by the O. P. A. officials, on April 30, 1946, is not in any way to be considered in determining the guilt or innocence of the defendants George Smith and Albert J. Deeb, of any of the crimes charged in the two informations and in the indictment. 2943

You will be mindful that your recollection of the evidence will prevail and not that of the Court or counsel on either side. If the Court has erred in its statement of any of the facts or any evidence that has been referred to, you will disregard the Court's statement. Insofar as counsel's comment or summation squares with the evidence in the case, you may accept it. If the comments are not justified by the evidence, in your judgment, you may disregard those comments. 2949

You should also disregard and thrust aside all remarks made which were addressed to your passion, prejudice or sympathy.

This courtroom must be regarded as a sacred temple of
2950 justice, and you, as jurors, must endeavor to render a fair and just verdict, in so far as it is humanly possible.

You have nothing to do with the punishment or the consequences of your verdict, providing your verdict is a just verdict based upon the evidence and the law. If your verdict reflects and represents your conscientious judgment, upon the evidence, and if it reflects your desire to do your duty as jurors and as citizens, the consequences that may come to any of these defendants following your verdict are not a matter with which you have any concern.

When you retire to your juryroom, you will treat each
2951 other with consideration and respect. If differences of opinion should arise, your discussions should be dignified, calm, intelligent and based upon the evidence and the law—the evidence as you recall it and the law as the Court has given it to you.

No juror has the right to erect an arbitrary standard and refuse to discuss the evidence or close his or her mind, and his or her judgment to the reasons advanced by other jurors. A juror should always be open to reason; if a juror believes that he is correct and if he is unconvinced by the arguments of others, that juror has the right to stand by his opinion, but he should make every effort to
2952 harmonize and to blend his judgment with that of the others, in so far as it can be done with justice and with the interests of the United States of America and of the defendants.

All that the Court can say to you, finally, is to render a verdict which shall be fair and impartial, based upon the evidence in the case as you have heard it, and as you have understood it, and the law as the Court has given you the law.

You will consider the guilt or innocence of each defendant separately, and on each separate count the Court has 2953
submitted to you of the informations and on the indictment.

You will, if you unanimously agree on your verdict, render and give a separate verdict as to each defendant and on each count submitted of the informations and the indictment; and your verdict shall be as to each defendant and as to each count submitted, in the informations, and as to the indictment, either guilty or not guilty, as you so find.

The rules provide that an opportunity must be given counsel for exceptions or additional requests in the absence 2954
of the jury, if they so desire.

Mr. Hart: I have no exceptions, your Honor.

The Court: Are there any requests that you desire to make?

Mr. Siegel: The only exception I have is as to the number of the counts. I seem to disagree with the Court. It may be through inadvertence.

The Court: What count do you disagree with?

Mr. Siegel: I have No. 28, 14, 33 and 38, which should also be dismissed against the defendant Deeb but your Honor did not include that.

The Court: I think there is a recording of it.

Mr. Siegel: I will check it with the paper that the clerk 2955
has prepared.

The Court: Yes, I wish you would check with the schedule which the clerk has prepared. He has prepared a schedule showing the counts which are being submitted to the jury. I assume there is no objection to having that go in the juryroom with a copy of the informations and of the indictment.

Are there any requests which the Government has to
2956 make?

Mr. Rudykoff: No requests, no exceptions.

The Court: Are there any further requests, Mr. Siegel or Mr. Hart?

Mr. Siegel: No, your Honor.

Mr. Hart: No.

The Court: The Court will at this time excuse the two alternate jurors from further service in the case, and the Court desires to especially thank both of you for your attendance, and your services are no longer required. You are excused with the thanks of the Court, for the balance
2957 of the term.

The other twelve jurors will retire. The clerk will give you a copy of the informations and the indictment and the schedules showing the disposition of the counts, and you may have any exhibits that you desire.

Mr. Hart: May we step up, if your Honor please?

The Court: Yes.

(Conference at the bench between Court and counsel outside of the hearing of the jury and the reporter.)

Mr. Siegel: I have checked the papers to be submitted,
2958 and they are correct.

(The jury retired at 4:45 p.m.)

(At 5.25 p.m. the following note was sent by the jury):

"Please send us the following exhibits for reference; Recap schedule, Exhibits 151 to 158."

Mr. Rudykoff: Any objection?
Mr. Hart: No objection. 2959

Mr. Siegel: No objection.

(At 5.40 p. m. the jury sent the following note):

"We also wish to see the following exhibits: 117 and 94."

Mr. Rudykoff: Exhibits 94 and 117 requested by the jury have been examined by all the parties. They were exhibited to counsel for all of the defendants as well as counsel for the Government, and after examination were turned over to the bailiff for delivery to the jury: 2960
Mr. Hart: No objection.
Mr. Siegel: No objection.

(At 7.20 p. m. the following proceedings took place after the jury returned from dinner):

The Court: All counsel are present. I received from the jury a third note reading, "Please send in Exhibits Nos. 118 and 96."
The clerk has given me these exhibits. They have been examined by counsel for the defendants and the Government attorney and all counsel consent that these two exhibits, No. 118 and No. 96, be sent in to the jury, and I so instructed the clerk. 2961

(At 9.50 p. m. the jury returned to the courtroom and the following proceedings took place):

The Clerk: Will the jurors please answer when your
2962 names are called?

(Jurors' names called.)

The Clerk: Mr. Foreman, have you agreed upon a verdict?

The Foreman: Yes, we have.

The Clerk: How say you? Now, you may read that off.

The Foreman: All of it?

The Clerk: Yes, sir.

The Foreman: With respect to the defendant Deeb,
2963 count 1, not guilty; that is on both informations, and can I save time by saying both informations and which way we decided on each count?

The Court: Yes.

The Foreman: Count 3, not guilty; count 11, not guilty; count 12, guilty; count 22, guilty; count 23, guilty; count 24, not guilty; count 27, not guilty; count 28, not guilty; count 29, guilty; count 30, not guilty; count 31, guilty; count 32, not guilty; count 36, not guilty; count 37, not guilty.

And on the indictment, count 1, guilty.

The Court: That is as to the defendant Deeb?

2964 The Foreman: Deeb.

The Court: And all those counts that you have read apply to both informations?

The Foreman: Yes, sir.

The Court: The same finding with reference to the same numbered count?

The Foreman: Yes, your Honor.

As far as the defendants Smith and Daisart Sportswear Inc., we found the same way for both of those defendants

on each information, and by reading one list I can cover them all. 2965

The Court: Yes, you may do so. On the same numbered counts?

The Foreman: Same numbered counts.

The Court: On both informations?

The Foreman: Yes, sir.

Count 1, guilty; count 2, guilty; count 3, guilty; count 4, guilty; count 5, guilty; count 6, guilty; count 7, guilty; count 9, guilty; count 10, guilty; count 11, guilty; count 12, guilty; count 13, not guilty; count 14, guilty; count 16, guilty; count 17, guilty; 18, guilty; 19, guilty; 20, guilty; 21, guilty; 22, guilty; 23, guilty; 24, guilty; 25, guilty; 26, guilty; 27, guilty; 28, guilty; 29, guilty; 30, guilty; 31, guilty; 32, guilty; 34, guilty; 35, guilty; 36, guilty; 37, guilty; 39, not guilty; 40, guilty, and 41, guilty. 2966

The Court: Did you arrive at a verdict on the indictment concerning the two defendants Daisart Sportswear and George Smith?

The Foreman: Yes, your Honor.

The Court: And what was your verdict with respect to that?

The Foreman: In both cases guilty.

The Court: As to Daisart Sportswear Inc. and George Smith the jury finds both of the defendants guilty on the indictment as charged? 2967

The Foreman: Yes, your Honor.

The Clerk: I will read these back and see if I am right.

Members of the jury, listen to your verdict as it stands recorded as to the defendant Deeb on informations 125-239 and 125-240, count 1, not guilty; 3, not guilty; count 11, not guilty; counts 12, 22 and 23, guilty; 24, not guilty;

and a day and the Court directs that you stand committed
3010 until the fine is paid or discharged according to law.

The Court further directs that the fine imposed in Case 126-295 and the sentence imposed on the conviction in Case No. 125-239 and 240 shall be served concurrently with the sentence imposed on you on conviction in Case No. 126-295 shall be served concurrently so that the total time served by you on the information and indictment shall not exceed one year and one day.

I will continue bail because I believe that there are substantial questions of law which should be decided by the Circuit Court. I feel that the question of the consolidation
3011 of the indictment and informations raised by both defendants and the question of immunity raised by the defendant, Smith, are substantial ones and should be passed upon by the Circuit Court.

Now, I will hear from the Government on the question of the amount of bail.

Mr. Rudykoff: Under the circumstances and the fact that the defendants have complied with all the requests relating to their appearance in Court, I would respectfully suggest that in so far as Deeb is concerned, that bail be fixed in the sum of $5,000.

3012 The Court: The man has two children and parents, and I hesitate about making his bail too high?

Mr. Rudykoff: In view of counsel's statement as to his present condition, and without conceding that it is true, one way or the other, may I therefore suggest as bail pending appeal in the sum of $2,500?

The Court: All right, I will fix that as the bail.

Mr. Rudykoff: With regard to the defendant Smith, I think at this time, after sentence, the present bail of $5,000 should be increased to $25,000.

27, not guilty; 28, not guilty; 29, guilty; 30, not guilty;
2968 31, guilty; 32, 36 and 37, not guilty.

On the conspiracy indictment 126-295, guilty.

As to the defendants Smith and Daisan on informations 125-239 and 125-240, guilty on counts 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12; not guilty on 13; guilty on 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37; not guilty on 39; guilty on 40 and 41.

And guilty on indictment 126-295, that is the conspiracy indictment.

The Foreman: That is correct.

The Clerk: And so say you all?

2969 Jurors: Yes.

The Court: Do the defendants desire to have the jury polled?

Mr. Siegel: Yes, sir. We would like to have the jury polled.

(Jury polled and each juror responded to the question that the above represented his or her verdict.)

The Court: Ladies and gentlemen of the jury: I know that you gave this case your very conscientious consideration. That was shown by the time you took and by the
2970 exhibits you called for and examined. I feel your verdict was amply justified by the evidence which was presented here on the trial. In performing your duty in this case you have performed the greatest service any citizen can perform in these times for his country; that is, passing upon the guilt or innocence of his fellow citizen when charged with crime. I know and I feel you did your duty courageously and conscientiously, and you are discharged

now with the thanks of the Court, and from further jury service of two years. 2971

Mr. Siegel: May we make our motions now?

(At this point the jury left the courtroom.)

The Court: Yes, you may make your motions if you desire.

Mr. Siegel: On behalf of Mr. Deeb I move that the verdict as submitted to the Court be set aside on the ground that it is contrary to the evidence and contrary to law.

The Court: Your motion is denied. 2972

Mr. Hart: On behalf of the defendant Daisart, I respectfully move to set aside the verdict upon the ground that it is contrary to the weight of evidence and contrary to law.

The Court: Your motion is denied.

Mr. Hart: On behalf of the defendant George Smith, I move to set aside the verdict on the ground that it is contrary to the weight of evidence and contrary to the law, and upon the further ground that the evidence adduced in this case, particularly Exhibits 147 and 147-A show that prior to the institution of this proceeding the defendant George Smith was granted immunity by a duly accredited 2973 official of the United States Office of Price Administration, before whom he had appeared and testified under compulsion of a subpoena after having claimed his privilege.

The Court: Your motion is denied.

Mr. Hart: Exception.

I respectfully ask your Honor on behalf of the defendant Smith to continue the bail of the defendant.

Mr. Hart: If your Honor please, the defendant Smith has appeared on each and every occasion that this case has been on the calendar, and in addition to his being a family man, he has daughters and sons-in-law. 3013

The Court: Has he a permanent place of abode?

Mr. Hart: He has a permanent place of abode in New Jersey. At the present time he resides at 136 Lakeside Avenue in Verona, New Jersey and he only lived in a hotel while the house was being fixed up.

The Court: I feel that the bail should be increased. It is usual and customary to increase the bail after sentence. That is the policy under the statute and this Court; so I feel that the bail should be at least $10,000. 3014

Mr. Hart: Can't your Honor make that $7500? The only reason I suggest that is the difference in the premium.

The Court: I don't think the additional premium should amount to very much. You must remember, there is a total overcharge of over a million dollars.

Mr. Rudykoff: Based upon my observation and experience with this defendant, I am not suggesting anything.

The Court: I think, Mr. Hart, that $10,000 is reasonable. So the bail for George Smith will be $10,000 and $2500 for the defendant Deeb. I am making the bail low for the defendant Deeb for the reasons I heretofore stated. 3015

Mr. Hart: First of all, I wish to thank your Honor for the kind consideration you have given us in this trial. I request your Honor to make all the sentences run concurrently.

The Court: No, Mr. Hart. I have given that matter serious thought. I don't want to impose sentences without turning the matter over in my mind and giving it full consideration. I feel that Smith was the principal mind in the

whole transaction. I feel that the Government has presented
3016 its case thoroughly and I have given them every consideration. The sentence that the Court could have imposed might have been substantially more.

I feel that the sentence of three years that I imposed—two years on the indictment and one year on the information to run concurrently with that imposed on the information—I mean the sentence to run concurrently with the one year sentence and the total time to be served by him will not extend beyond three years, is a very fair sentence. I would rather be more merciful than harsh, and I think that sentence, in view of the liberal rules in the Federal
3017 Administration are so much more favorable to the defendants than under the State laws—I think that is a very merciful sentence.

Mr. Hart: If your Honor sentenced the defendant to three years and allowed all the sentences to run concurrently, he would receive the benefit of the parole laws on the information that your Honor sentenced him to one year. There is grave doubt that there will be any time off, because of the fact that is less than a year and a day. If, however, the two information sentences were to run concurrently and your Honor fixed the maximum amount on the indictment, then the defendant would get the benefit
3018 of the parole law.

The Court: No, I feel there is too much involved here. After all, there were too many violations involved here. This is not a case of an isolated transaction, but this case presented a general scheme to evade the law. This is not an isolated transaction of one or two violations. It is substantial. It ran into hundreds of thousands of yards and I feel that I have been very merciful, and I have given

The Court: I do not want to impose sentence now. I
2974 want to turn this matter over in my mind. Imposition of sentence in this case is something that I feel I want to give considerable thought to. I go into the Motion Part on Monday, and I have no calendar I think on Thursday; that is, December 4. Would that be convenient to all of you gentlemen?

Mr. Siegel: Yes.

The Court: Mr. Hart?

Mr. Hart: Judge, it occurs to me that on December 4th there is a Board of Estimate meeting, and there are some items on the calendar, or the calendar will contain
2975 some matters that I am interested in.

The Court: Is that Board of Estimate meeting in the morning?

Mr. Hart: It is at 10.30 in the morning, but the items on the calendar may not be reached until some time later in the day.

The Court: We can set it down for Wednesday, if that would be better, at 2.30.

Mr. Hart: That will be all right.

The Court: December 3. Is that convenient to you, Mr. Rudykoff?

Mr. Rudykoff: Yes, your Honor.

2976 The Court: Room 505 in this courthouse. What is the bail now?

Mr. Rudykoff: 5000 as to Smith and twenty-five as to Deeb.

The Court: And they have appeared each time the case has been on the calendar?

Mr. Rudykoff: Yes, sir.

it much thought. Of course, the law has been violated by all these defendants, although I felt that the defendant Deeb played a minor part in it. 3019

(Discussion off the record.)

Mr. Siegel: May I say this on behalf of Deeb? I ask your Honor will you consider the imposition of the fine remitted?

The Court: No, each of the fines is a substantial amount. If I thought it should have been more than $10,000, and I should have fined him more. If I thought he profited more than $10,000, I would have fined him more. 3020

Mr. Rudykoff: May I state this, for the purpose of clarification? Of course I did not follow correctly, but some time during the sentence I thought you said, instead of C-125-239 that your Honor said C-125-230. Assuming that is so, you intended to say 125-239?

The Court: Yes.

Mr. Rudykoff: With regard to the sentence imposed on the two informations, for the purpose of clarification, as I understood it, and I assume the defendants understand the sentences with regard to the two informations run concurrently and consecutively with the sentence in the indictment. 3021

The Court: One year as to Deeb, but as to Smith I sentenced him on Information 125-239 on each count on which he was convicted to a term of one year and I directed all sentences be served concurrently.

On Information 125-240, I sentenced him to a term, in addition to the fine, of one year on each count on which he was convicted and I directed that those sentences be served

The Court: I think the bail unless the Government has any serious objections should be continued in that amount. 2977

Mr. Rudykoff: We have no objection.

The Court: Is there any necessity to rewrite the bond, or will the same bond continue?

The Clerk: It runs until sentence.

The Court: Then we will continue the defendants in bail until Wednesday, December 3, 2.30, Room 506.

I want to thank counsel for the cooperation with the Court, and all of you gentlemen. You have very ably conducted yourselves to protect the interests of your respective clients.

Mr. Hart: Thank you, your Honor, for the courteous 2978 attention you have given and the fair and impartial conduct of the trial itself.

Mr. Siegel: I join in Mr. Hart's remarks.

The Court: Any evidence that you gentlemen may want to submit to the Court concerning the character of these defendants the Court will be glad to receive, not in the nature of testimony but in the nature of letters.

Mr. Siegel: Letters?

The Court: Yes. If you desire to submit any I will be glad to receive them.

2979

December 3, 1947, 2.30 P.M.

Appearances as before.

Mr. Siegel: If your Honor please, I do not see Brother Hart here or the defendant Smith.

The Court: Very well, we will wait for them.

Mr. Siegel: In the meantime may I hand up these letters
2980 to you?

The Court: Yes.

(Documents handed to the Court.).

Mr. Siegel: I see they are here now.

Mr. Rudykoff: May it please the Court: the trial of these defendants commenced, as your Honor well knows, on November 17th and terminated on November 28th. The jury found these defendants guilty,—the defendant George Smith, the defendant Daisart Sportswear, Inc. were found
2981 guilty in 35 counts, charging illegal application for priorities for the purpose of obtaining textiles.

In addition, they were found guilty in 35 counts relating to the illegal division of such textiles.

Furthermore, they were found guilty of conspiracy to violate the Emergency Control Act in respect to the textiles so obtained.

During the course of the trial, the defendants stated that these priorities related to the war effort. As to the defendant Deeb, the jury found him guilty on five counts relating to the illegal application of said priorities and five counts relating to the division of materials so obtained. In addi-
2982 tion, he too was found guilty of conspiracy to violate the OPA Control Act.

The evidence disclosed that these ratings were first assigned to the Metals Disintegrating Company. That company had a number of contracts which required the manufacture of powder for ammunition purposes during the war. In addition, that company was manufacturing a product which was to become part of the atomic bomb project. In the course of the manufacture of those products, it was

necessary to use certain bags composed of textiles. These bags were ordered from the Daisart Sportswear Company and it was in connection with that that the Metals Disintegrating Company required certain bags and the evidence shows that their requirements did not exceed 100,000 yards. However, on the strength of those priorities, these defendants caused priorities to be extended for a million yards of material of different kinds and colors, and as a result obtained 3,000,000 yards of surplus material. 2982

During the course of the trial three-quarters of a million of these yards were traced from the Daisart Sportswear Company to manufacturers of wearing apparel and such necessities and as a result of that it was demonstrated beyond any reasonable doubt, as to those three-quarters of a million yards, there was an overage of $350,000 above the maximum price which was permitted under the law and regulations then existing, or an average of about 30 cents per yard for each and every yard of said material. As to that overage, it was shown by checks which are undisputed and cannot be disputed that $50,000 of that overage came into various accounts of the defendant Deeb and that the balance was deposited to the account of the Smiths and Daisart Sportswear, and at least one other corporation controlled by Smith, as well as cash and besides various checks. 2984 2985

In the course of the conspiracy and in furtherance thereof, it was demonstrated that fictitious invoices were utilized, and that the books of account which were required to be kept, were not kept, and that in response to demands by Government agencies there was no disclosure of the required records to be kept. However, the evidence really demonstrated only a small segment of the conspiracy as it actually

was and existed. The transactions which the Government's
2986 investigation showed and various agencies of the Government disclosed, resulted in applications of extensions of over 6,600,000 yards of textiles throughout the City of New York with various supplies of various types of material. As a result of that, the Government was able to trace 3,150,000 yards of material to various manufacturers of different products, generally related to wearing apparel for both men and women. Put on the basis of that amount of overage, that is, 3,150,000 yards, it has been calculated that the overage, the amount in excess of the maximum price as
2987 permitted by law was over a million dollars. In this connection, it is interesting to note this 30 cents a yard on every yard of material that was charged and that these activities ranged over a period of eight months starting in about December of 1944 and they carried daily to each and every transaction which involved a substantial yardage of material.

Throughout the trial, and I say this without fear of contradiction, that there wasn't any evidence whatsoever of mitigating circumstances. These defendants were not the victims of a black market. They created it. They caused others to become victims of a black market. The violations
2988 were deliberate, boldly conceived and callously executed.

We have no definite recommendation at this sitting. We feel that this Court is familiar with all of the salient facts and will sentence the defendants in accordance with the offenses they have committed. However, we wish to make this observation, to wit, in sentencing these men, it should carry with it not only substantial fines, but also imprisonment, and we suggest that because it is quite evident that these defendants lack moral integrity and fibre to observe

the Laws of the United States; these violations were deliberate, and therefore something must be done to instill the 2989
meaning in the minds of these defendants that they cannot continue to violate the Laws of the United States, and in addition, others must be deterred from violating the Laws of the United States.

As to the fines, I do not think there can be any doubt that basically these defendants must be required to restore whatever profits they derived from their illegal practices and that furthermore, such fines should carry with it the provision that they shall stand committed until the fines are paid or discharged according to law.

Mr. Hart: If the Court please, on behalf of the defendant 2990
George Smith as well as the defendant Daisart Sportswear Company, Inc., it is not my purpose at this time to discuss the guilt or innocence of the defendants. That question has been adequately passed on by the jury in this case. As I understand the purpose of my appearance here this morning is to address myself to the Court on the question of punishment and to state such facts that I think should be received by the Court in mitigation. I am impelled by the observation by Mr. Rudykoff to state to your Honor that the conclusions drawn by him of the vast amount of moneys realized by the Daisart Company and George Smith are 2991
not borne out by the evidence in this case.

The factors in this case which have not been discussed by Mr. Rudykoff and which must have made themselves apparent to the Court, that there was a concerted effort on the part of all to deliver all the goods ordered by the defendants transferred to George Smith, but that as a result of the apprehension on the part of each one of those, one, not called as a witness and who was an officer of one of the

supplier's concerns thought he had something to fear at
2992 the time one of the witnesses was called to the United States Attorney's Office, so much so, that he made arrangements with him to receive a telephone call after the United States Attorneys left the office, and even called upon him himself, and was questioned by him concerning these transactions, and the suppliers themselves have, to a great extent provided as much to the result as the acts of the defendants.

I say that because, although the time of a defense has long since passed and the jury has rendered a verdict, I merely state that to offset whatever thought your Honor may have as the result of the gratuitous statements made
2993 by Mr. Rudykoff, as to his conjecture as to the amount of profits derived by the defendant from the transactions which are the subject matter of the informations and indictment.

I direct your Honor's attention specifically to this fact, that is the character of the witnesses who took the stand in behalf of George Smith. They were character witnesses in the community where the defendant resides. I personally have known George Smith for about twenty years. He served in the first World War and engaged in six major combats. Your Honor has letters from all sorts of persons,
2994 one from a Judge out West, who states he served with Smith in World War I where he conducted himself with great credit to himself.

I realize these factors are not excuses for any acts committed by the defendants, but I nevertheless urge they be taken into consideration by the Court. He has a son and young daughter, both recently married; he enjoys a good reputation and I ask your Honor to extend such clemency under the circumstances as your Honor sees fit based upon

the evidence and from the letters submitted to your Honor.

Mr. Siegel: If your Honor please, on behalf of the defendant Deeb, I would like to say a few words. I, too, will not go into all the evidence in the case because that has been disposed of by the jury, and the jury brought in its findings. 2995

Your Honor has sat very patiently for two weeks in the trial of this case, and I believe you must have come to the conclusion that Deeb has played only a comparatively small part in this matter. I believe the evidence discloses in only two transactions has he played any part in the sale of merchandise of the Daisart Corporation, and on several other occasions where he was instrumental in making some small sales. I think on that score your Honor has made some observations on the part he played in those transactions. 2996

I know your Honor is possessed of one of the greatest virtues anybody can have and that is humaneness. We are judging here a fellow man in this particular situation where we have placed before you a number of letters from people from various walks of life, church, newspaper fields, and various other fields and they all attest to the fact that they have known Mr. Deeb over a number of years and the reputation he has enjoyed has been the finest.

Twelve years ago he was placed in a very unfortunate situation, when he lost his wife. He had two daughters with him at that time. He has never remarried but has devoted his entire life in bringing up those two girls who are here at this time. He has been a father and mother to them. 2997

For some time prior to 1945 he worked in a defense plant and earned some money. He then opened up a business in the latter part of 1945, the name of which was Len Craft Corporation. However, due to the pressure of these indictments, his credit was practically curtailed to such a point

that only recently he was forced to make an assignment for
2998 the benefit of his creditors. Only yesterday the assets were sold and used to pay creditors, and today he is in absolute destitution. He has no money at all.

I have known Deeb for the last two years, and I say, as a man who devoted himself to his family, particularly to his father and mother, I cannot say enough for him. I believe if sentence is imposed on him the shock may be enough to bring on his death. Of course, I realize the great decision that your Honor must make and I also realize how unpleasant a duty it is that you have to perform. I know that you have been very fair during the entire proceeding and I
2999 know you leaned backwards as far as you could to be fair to the defendants. I do ask that you take everything into consideration—the fact that he is a man with two daughters; the disgrace due to the fact that he has been convicted; the shame that has been brought upon him and the probable adequate punishment for whatever he has done. I do not feel that Mr. Rudykoff has any great feeling that the imposition of a fine or jail sentence will produce any good either to society in general or to this defendant, who is admittedly repentent for whatever he has done, and I believe this is the type of crime that we will have no repetition of and I do ask your Honor from that standpoint to
3000 give this defendant whatever break you can, and whatsoever can be given, I know you will temper justice with mercy, particularly due to the fact that as in most of these cases, the real sufferers are not so much the defendants as will be the family.

The Court: Have you any desire to be heard, Mr. Smith?

The Defendant Smith: I would just like to take this opportunity to thank the Court and Mr. Rudykoff for their conduct in this trial.

The Court: How about you, Mr. Deeb?

3001 The Defendant Deeb: If your Honor please, as far as guilt is concerned, there is nothing I can say and as to the sentence, I must leave it in your hands.

The Court: Imposition of sentences by the Court, especially in criminal cases, is not a pleasant task to a judge, and it is not a pleasant task for me, but the Court, under the Constitution of the United States and under his oath of office has certain duties to perform. We have here the verdict of the jury. This crime involved the disposal of a large amount of merchandise running into many thousands of dollars.

3002 The sentence of the Court is as to the Daisart Sportswear, Inc. as follows:

On Count No. 1 he must pay a fine in the sum of $10,000.

Count No. 2 he will be fined the sum of $10,000.

Count No. 3 he will be fined the sum of $10,000.

Count No. 4 he must pay a fine of $10,000.

Count No. 5 he must pay a fine of $10,000.

And a similar fine on each of Counts 6, 7, 9, 10, 11, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 40 and 41.

On Informations C-125-230 and Information C-125-240.

3003 In the indictment charging conspiracy Information 126-295, I fine Daisart Sportswear, Inc. the sum of $10,000.

Mr. Hart: The defendant George Smith moves in arrest of judgment upon the ground that the Court has no jurisdiction either with respect to the informations or the indictment, because the defendant George Smith appears on compulsion of subpoena by officers or agents of the Office of Price Administration, claiming privilege as to giving testimony relating to transactions, matters and things which

are the basis and subject matter of the information and
3004 indictment.

The Court: The motion is denied.

Mr. Hart: Exception.

The Court: I consider the letters submitted on behalf of George Smith, particularly having relation to his record in the first World War—and I think this applies to any record in any war, however praiseworthy, and in this case where he was a war veteran in the first World War, adds additional responsibility in participating in those acts of which he has been convicted.

The counts on which the defendant George Smith was
3005 convicted, being Counts 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 40 and 41, the sentence of the Court will be one year and a fine of $10,000 of each of the above counts and the defendant George Smith is to be committed on those fines until paid or discharged according to law.

The Court also rules on the information of these counts, they shall run concurrently.

In the case of C-125-240 on which the defendant George Smith was convicted on the same number of counts, the Court imposes on each count, a separate fine of $10,000 and
3006 a sentence of one year.

The Court further rules that the defendant George Smith shall stand committed on the said fines until they are paid or discharged according to law.

On the Indictment 126-295 as to the defendant George Smith, the Court imposes a fine of $10,000 and a term of two years and the Court directs that the defendant George Smith stand committed on the fine until it is paid or discharged according to law.

Answer: It did.

3046 Question: Where were they kept?

Answer: At place of business, 99 Central Avenue, Newark.

Question: Where is the registered office of Daisart Sportswear Inc?

Answer: I was the registered officer.

Question: Where was the registered office.

Answer: 99 Central Avenue, Newark. Daisart Sportswear Inc.

Question: And the books of the company were kept at that address also?

3047 Answer: Yes.

Question: Where are the books of Daisart Sportswear Inc. at the present time?

Answer: I don't know.

Question: Who had control of the books and records of Daisart Sportswear Inc?

Answer: I did.

Question: What did you do with them.

Answer: They were stored at my home.

Question: Where was that?

Answer: 111—14th Avenue, Belmar.

3048 Question: Tell us again what happened to them?

Answer: In January or February of 1946, that home was sold. I was at that time in California. Instructions were given by me to remove all personal belongings and vacate the property.

Question: To whom did you give those instructions?

Answer: To my truck driver. He did so and brought them to my hotel. When we arrived home I paid no atten-

Sentence

The Court further directs that the sentence imposed in Case 125-240 and 126-295 are to run concurrently, beginning after sentence in C-125-239 has been served. 3007

As to the defendant Deeb, I have been much impressed by the letters that have been offered in his behalf. I am a family man myself and I am very much impressed by his devotion to his children and to his parents.

Frankly I believe your part in these transactions was a minor one. If I could fairly suspend sentence because of your devotion to your family, I would be glad to do so. I feel however, that you profited to a substantial extent in your transactions but this is a type of case in which the Court can extend extreme clemency, therefore Albert J. 3008 Deeb in the Information C-125-239, Count No. 12, the Court fines you the sum of $1,000 and imposes the sentence of one year.

On Count No. 22 you are fined the sum of $1,000 and sentenced to one year.

On Count 23, you are fined the sum of $1,000 and I impose a sentence of one year.

In Action 126-295 the Court fines you $1,000 and imposes a sentence of one year, and on Count 31 the Court fines you the sum of $1,000 and imposes a sentence of one year.

The Court imposes the same fine and the same sentence 3009 on the same number of counts on which you were convicted on Information 125-240 and the Court directs that you stand committed until the fine imposed in this information is paid or discharged according to law.

The Court further directs that the sentences imposed upon you on both informations and the Indictment 126-295 on which you were convicted for the crime of conspiracy, the Court imposes a fine of $10,000 and a sentence of one year

tion to what had been brought until the occasion arose for me to look for them. The date that the supoena was served. 3049
We have since looked for them and have not been able to locate them yet. It is my belief that they were left there. At 111—14th Avenue.

Question: When did that take place?

Answer: Some time in January or the beginning of February, 1946.

Question: If those books would be found, would you have any objection to our examining them?

Answer: With the greatest of pleasure. They were examined by War Production Board, War Labor Board, 3050
State Labor Department, that is all.

Question: When did those examinations take place?

Answer: Some time in 1945.

Question: While you were at 111—14th Avenue?

Answer: Before I moved. They were examined at 99 Central Avenue.

Question: Did Daisart Sportswear Inc. engage in the manufacture of textiles?

Answer: They did not.

Question: Did Daisart Sportswear Inc., produce or purchase yarns?

Answer: They did not. 3051

Question: Did Daisart Sportswear Inc., buy any textiles, fabrics or materials for the sole purpose of reselling same?

Answer: They did not.

Question: Did Daisart Sportswear Inc. sell only those textiles and fabrics which were considered surplusages from their clothing manufacturing operations?

concurrently. On Information 125-240 I sentenced him to
3022 a term, in addition to the fine of course, of one year on each count on which he was convicted and I directed that those sentences be served concurrently and that sentence on that one information be served concurrently also with the two years sentence imposed on the indictment. In other words, he has to serve a term imposed on Information 239 concurrently and consecutively with the sentence imposed in the indictment. In 240, to serve a term imposed concurrently with each count and also concurrently with the indictment, so that the total time to be served by Smith, as imposed by the Court, should not exceed three years.

3023 He serves one year on No. 239 and when that is served, he serves two years on the indictment, those two last sentences to be served concurrently and all sentences on Deeb shall be served concurrently.

Let the Marshal take them in custody and I will be in Chambers. That will relieve the attorneys of any responsibility.

Mr. Deeb, you better keep these two letters, so that you may be able to submit them if necessary to the Parole Board.

The same applies to Mr. Hart's client, you may keep
3024 them.

Government's Exhibit 147A

TESTIMONY TAKEN BEFORE SYDNEY I. TURTZ, CHIEF, APPAREL & INDUSTRIAL MATERIALS ENFORCEMENT SECTION, FROM IDA SMITH, JEFFREY BAKER and GEORGE SMITH on the 30th day of April, 1946, at the OFFICE OF PRICE ADMINISTRATION, 1060 BROAD STREET, NEWARK, N. J. 3025

Mary J. Legnosky, Secretary, was duly sworn to transcribe the testimony to the best of her knowledge and ability.

Present: 3026

Robert L. Hood of the Office of William J. Egan, on behalf of Mrs. Ida Smith, Jeffrey Baker and George Smith.

On behalf of the Office of Price Administration: J. J. Nankin, Samuel Halperyn and Sydney I. Turtz.

At this point, a discussion took place between Mr. Hood and Mr. Turtz, the precise wording of which I was unable to transcribe by reason of the rapid exchange of statements. However, the tenor of the discussion was as follows: 3027

Mr. Hood objected to the production of Mr. George Smith for the purpose of giving testimony by reason of the fact that Mr. Smith (as well as the others) had been served with a District Director's subpoena rather than an Administrator subpoena. Mr. Hood stated that he doubted the validity of the District Director subpoena and that consequently it might be construed that Mr. Smith was vol-

untarily present at the hearing and consequently could
3028 not claim privilege with the resulting immunity.

Mr. Turtz, however, took the position that appearance by Mr. Smith pursuant to the District Director subpoena would be construed as an involuntary and compulsory appearance so that Mr. Smith's right to claim privilege and immunity would for that reason not be abridged.

Mr. Hood asked Mr. Turtz if he were authorized to make that representation on behalf of the Office of Price Administration and Mr. Turtz stated that in connection with the particular hearing, it was his position that Mr. Smith was
3029 in attendance under compulsion of a valid subpoena and that by reason thereof such privilege and immunity as was properly claimed by Mr. Smith would inure to him.

Mr. Turtz: Mr. Smith, do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God.

Mr. Smith: I do.

Mr. Turtz: Mr. Smith, you are here pursuant to a District Director subpoena and your counsel, Mr. Hood and I have stated (since the question is raised) that this subpoena shall have the same effect as a subpoena issued
3030 by the Price Administrator and that it shall be considered that you are here with the same degree of compulsion as though this subpoena had been issued by the Price Administrator. Now, before beginning this examination, Mr. Smith, I feel that it is fair that you be advised that you cannot be compelled to make any statements which will incriminate you and to advise you that there are certain constitutional guarantees which you have. Do you understand that, Mr. Smith?

Mr. Smith: I do.

Question: What is your full name? 3031

Answer: George Smith.

Question: Where do you live?

Answer: Presently at the Robert Treat Hotel. Permanent address is 99—12th Avenue, Belmar, New Jersey.

Question: What business are you in?

Answer: Not any.

Question: Are you employed at the present time?

Answer: No.

Question: How long a time have you been unemployed and out of business?

3032

Answer: Since October 1945.

Question: Were you connected with the Daisart Manufacturing Company?

Answer: I was.

Question: In what capacity?

Answer: As manager.

Mr. Turtz: At this point, Mr. Smith stated that he thought he had a blanket privilege. Mr. Turtz stated that no privilege having been claimed up to this point no immunity would result with respect to the answers made to the questions propounded:

Mr. Smith: I want to claim privilege as to anything that I say. 3033

Mr. Turtz: Up to this point in the record there has been no claim made by you with respect to any privilege or immunity?

Mr. Smith: Correct.

Mr. Turtz: Your counsel has stated to you that with respect to any question which you feel the answer will

tend to incriminate you, you have to make the request for
3034 privilege yourself. In other words, at this point, Mr. Smith, you are making a request for privilege with respect to any question that I propound to you, except as to those questions which I have already propounded?

Answer: That's correct.

Question: Mr. Smith, as Manager of Daisart Manufacturing Company, and as Manager of Daisart Sportswear Inc., you have been requested to produce at this hearing pursuant to this subpoena, all purchase records, sales records, invoices, journals, ledgers, cash disbursement
3035 books, accounts receivable ledgers, accounts payable ledgers and any and all other records and documents pertaining to the purchase, sale, manufacture, fabrication and/or finishing piece goods, materials, fabrics from January 1, 1945 up to the present time. Have you produced those records?

Answer: The subpoena calls for that as of 1945, Daisart Manufacturing Company went out of existence in 1944. That has no bearing on this. I have no records for 1945.

Question: With respect to Daisart Sportswear Inc. you have no records?

Answer: No records at all, that is no records at the
3036 present time.

Question: Were there any records kept by Daisart Sportswear Inc?

Answer: Definitely.

Question: Where are those records?

Answer: When Daisart Manufacturing Company went out of business all records that I thought were not pertinent and that I did not need, were destroyed. Records that I

kept were shipped and stored at home. I had them at that time at 111—14th Avenue, Belmar. In the interim, the house was sold and records lost or misplaced. 3037

Question: So you state, as a fact, that there are no longer in existence any records called for by this subpoena as regards Daisart Sportswear Inc.?

Answer: To the best of my knowledge, yes.

Question: You would have knowledge of those records if they were in existence?

Answer: My answer to that question is that there are no records.

Question: Mr. Smith, you were required to produce pursuant to a subpoena served on behalf of George Smith individually as distinguished from your connection with Daisart Sportswear Inc., or Daisart Manufacturing Company, all purchase records, sales records, invoices, journals, ledgers, cash disbursement books, accounts receivable ledgers, accounts payable ledgers and any and all other records and documents pertaining to the purchase, sale, manufacture, fabrication and/or finishing piece goods, materials, fabrics from January 1, 1945, up to the present time. Have you produced those records? 3038

Answer: They are in the same category as the previous statement as to records. 3039

Mr. Turtz: Mr. Hood, I state that in the record that the last statement made by the witness is a voluntary statement.

Mr. Hood: I cannot argue further right now.

Question: Do you make any distinction, Mr. Smith, between the Daisart Sportswear Inc., and Daisart Manufacturing Company?

Government's Exhibit 147A

Answer: There is no such thing as Daisart Inc. Daisart
3040 Manufacturing Company.

Question: Is there a Daisart Sportswear Inc?

Answer: There is.

Question: Are these three separate companies?

Answer: There is only one.

Question: Daisart Inc., is that the same as Daisart Sportswear Inc?

Answer: Daisart Sportswear Inc., is the only one.

Question: There is a Daisart Sportswear Inc?

Answer: That is the full and complete name of that company.

3041

Question: Is there a Daisart Inc?

Answer: There is not.

Question: Is there or was there a Daisart Manufacturing Company?

Answer: There was a Daisart Manufacturing Company.

Question: Confining ourselves to Daisart Sportswear Inc. since you have stated that Daisart Manufacturing Company went out of existence in 1943 or 1944. Daisart Sportswear Inc., is a corporation. Is that correct?

Answer: Yes.

Question: And who are the officers and directors of
3042 Daisart Sportswear Inc?

Answer: I was all of them.

Question: You were the sole stockholder and the officers and director? You were the corporation sole owner?

Answer: Yes.

Question: Daisart Sportswear Inc., was a N. J. corporation?

Answer: Correct.

Government's Exhibit 147A

Question: And what business was Daisart Sportswear Inc. engaged in? 3043

Answer: The manufacture, purchase, sales of textiles and allied products.

Question: And Daisart Sportswear Inc. did make sales of textiles, fabrics?

Answer: Correct.

Question: Did they sell any other commodity?

Answer: Sell clothing in various phases.

Question: It also engaged in textiles?

Answer: Any time it had a surplus of materials on hand. Release that.

Question: Is Daisart Sportswear Inc., in existence? 3044

Answer: No.

Question: Was it dissolved?

Answer: It was not dissolved, but was not actively engaged in since October, 1945.

Question: Daisart Sportswear Inc., as a legal entity, is still in business?

Answer: It is not at the present time actively engaged in any business.

Question: Does Daisart Sportswear Inc., have a Board of Directors?

Answer: I am vague on that. I imagine it did but never functioned. 3045

Question: Who were the Directors?

Answer: As far as I know, I was all of that.

Question: Does Daisart Sportswear have any stockholders?

Answer: No.

Question: Does Daisart Sportswear Inc., maintain a set of books in connection with its activities?

Answer: Not clothing operations. From various operations.

3052

Question: They had operations other than clothing?

Answer: Correct.

Question: What were those operations?

Answer: Manufacturing, processing ammunition bags.

Question: And were the manufacturing of ammunition bags directly performed for the U. S. government or as a sub-contractor or contractor for other concerns who manufacture directly for the government?

Answer: Yes.

Question: What was the name of that other Company?

3053

Answer: Metals Disintegrating Company.

Question: With respect to Metals, did Daisart Sportswear Inc., or any of its officers, have any interest in the Metals Disintegrating Company?

Answer: None whatsoever. Daisart Sportswear Inc., was solely and exclusively a contractor for Metals.

Question: Was Daisart Sportswear Inc., solely and exclusively a contractor?

Answer: It contracted for many other concerns besides that. That was Metals that had a direct government contract and we contracted for them.

3054

Question: You say Daisart Sportswear Inc., contracted from many other companies. State for us the names of those other companies?

Answer: Lenn Sportswear Inc.
Mickey Finn Clothing
Kit Packing Co.
London H. C. Co.
London Vest Co. and many others whose names slipped my mind.

Question: With respect to any of these companies, which you have mentioned, or any which you at the moment do not recall, did Daisart Sportswear Inc. have any interest in any of the companies or any of Daisart's officers have any interest? 3055

Answer: None whatsoever.

Question: And you state the fact to be that Daisart Sportswear Inc., at no time purchased fabrics, materials, for the sole purpose of reselling these fabrics?

Answer: Correct.

Question: But you do state the fact to be that sales of materials and fabrics were made by Daisart Sportswear Inc? 3056

Answer: Correct.

Question: Can you tell me how Daisart Sportswear Inc., arrived at its selling price with respect to the items that it sold?

Answer: Since it was surplus, it was sold at the price billed to me plus freight and haulage and less discount allowed to me.

Question: In other words, Daisart Sportswear Inc., sold at cost plus freight less any discounts, cash or otherwise, received by Daisart Sportswear Inc? 3057

Answer: Correct.

Question: For the year 1945, what was the dollar volume of sales of fabrics and materials made by Daisart Sportswear Inc?

Answer: I have no knowledge of that. Without records I cannot tell.

Question: Are there such records available?

Answer: There are not to my knowledge.

3058 Question: Can you tell the names of the persons or companies who purchased fabrics or piece goods or materials from Daisart Sportswear Inc?

Answer: Off hand I don't know. Not without consulting records.

Question: You don't remember the names?

Answer: Not off hand. I could name some, but I would rather not answer.

Question: How many employees did Daisart Sportswear Inc., have?

Answer: On an average of about fifty.

3059 Question: And among those fifty, was there an employee by the name of Ida Smith?

Answer: No.

Question: Was there an employee by the name of Jeffrey Baker?

Answer: Never.

Question: Did either Ida Smith or Jeffrey Baker work for the Daisart Manufacturing Company?

Answer: At no time.

Question: Daisart Manufacturing Company was an individual doing business with a trading name?

Answer: Correct. That was before 1945. I don't see

3060 where it is pertinent.

Mr. Turtz: I asked him whether Daisart Manufacturing Company was an individual doing business under a trade name. He said Yes. I asked him who was the individual. He refused to answer unless on advice of counsel.

Mr. Hood: It is not proper within the scope of the subpoena.

Government's Exhibit 147A

Mr. Turtz: Under the circumstances, I withdraw the question as to the individual who was the owner of Daisart Manufacturing Company. 3061

Question: In connection with its manufacturing operations, Daisart Sportswear Inc., had to acquire certain materials and fabrics? Can you give me the names of the persons or firms from whom those fabrics were purchased?

Answer: A. Steinman & Co. 4th Ave., New York City.
L. Lazarus & Co., New York City.
Southeastern Cottons.
There are several others but I cannot remember them.

Question: There were others? And in connection with its purchases from the firms that you have mentioned and with respect to those which at the moment you don't recall, did Daisart Sportswear Inc., receive invoices from these suppliers? 3062

Answer: They did.

Question: Did Daisart Sportswear Inc., pay for its purchases by check or cash?

Answer: By check at all times.

Question: Where did Daisart Sportswear Inc., bank?

Answer: Fidelity Union Trust Company, Newark, N. J.

Question: Was Daisart Sportswear Inc., at any time compelled to pay money on the side? 3063

Answer: At no time.

Question: I believe you stated Daisart at all times received invoices and made all its payments by check?

Answer: Correct.

Question: For how long a time has Daisart Sportswear Inc., been engaged in selling fabrics?

Answer: From about April or May of 1945.

Government's Exhibit 147A

Question: When was Daisart Sportswear incorporated?

3064 Answer: Some time at the end of 1943 or 1944.

Question: Was the incorporation of Daisart Sportswear Inc., simultaneously with the termination of Daisart Manufacturing Company?

Answer: Correct.

Question: Was it a successor to Daisart Manufacturing Company?

Anwer: It was.

Question: Where is the premises occupied by Daisart Sportswear Inc?

Answer: At 99 Central Avenue, Newark, N. J.

3065 Question: Are those premises owned by Daisart?

Answer: They are not. They were leased from Real Estate Management.

Question: When did Daisart Sportswear Inc., leave the premises at 99 Central Avenue?

Answer: On or about October 1945.

Question: Has Daisart Sportswear Inc., occupied other premises for business purposes?

Answer: No.

Question: Did Daisart Sportswear Inc., maintain social security account for its employees?

3066 Answer: It did.

Question: Kept a separate bank account?

Answer: It did not.

Question: Considered a certain portion of its bank account as allocated for that purpose?

Answer: Correct.

Question: On behalf of its employees?

Answer: Yes.

Government's Exhibit 147A

Question: Has Daisart Sportswear Inc., filed it federal income tax for 1945? 3067

Answer: It has not as yet due to inaccurate records.

Question: Is it in the process of preparing those records at the present time?

Answer: It is.

Question: From what records?

Answer: From the bank accounts and statements.

Question: Who has these bank accounts and statements?

Answer: They are kept by my accountant.

Question: Is he the accountant for Daisart Sportswear Inc? 3068

Answer: Yes.

Question: What is his name?

Answer: Louis Wiener, 17 William Street, Newark, N. J.

Question: Precisely what records does he have of Daisart Sportswear Inc?

Answer: To the best of my knowledge, he has social security records and statements from the bank that he had gotten with my authorization.

Question: And will those records reflect the sales of fabrics and materials etc? 3069

Answer: Those records will reflect total overall business of Daisart Sportswear Inc., and that will include sales and purchases of all materials, trimmings, accessories, etc.

Question: May I ask why you did not produce those records?

Answer: I do not possess those. They are not valid in the absence of bank report. I do not specify separate items.

Question: The fact is, Mr. Smith, that on the social security records of Daisart Sportswear Inc., you will be

able to reproduce or a duly authorized person will be able
3070 to reconstruct Daisart's labor cost?

Answer: Correct.

Question: And from its records and deposits, Daisart Sportswear Inc., will be able to reconstruct its sales?

Answer: Total overall sales.

Question: And it is on that basis of the reconstructed sales you intend to file income tax return?

Answer: Correct.

Question: What was the total volume of sales of Daisart Sportswear Inc., from all activities in 1945?

Answer: To the best of my knowledge, about $200,000.
3071

Question: Daisart Sportswear Inc., as a corporation, I assume, have certain corporate records such as books, certificate of incorporation and date?

Answer: Correct.

Question: Are those records still in existence?

Answer: To the best of my knowledge no.

Question: Mr. Smith, you stated that Daisart Sportswear Inc., was a contractor instead of a manufacturer. Is that correct?

Answer: Yes.

Question: In connection with its contracting activities,
3072 did Daisart Sportswear Inc., at any time receive any fabrics or materials from the manufacturer?

Answer: At all times.

Question: By manufacturer, I mean the company you were working for as a contractor at all times purchased the materials?

Answer: We simply supplied labor, trimmings, etc.

Question: And what was the custom engaged in by these manufacturers in buying materials for Daisart Sportswear

Inc., did they supply a sufficient amount for a particular commodity that you were contracting for them? 3073

Answer: At all times. Materials only.

Question: Did you ever receive an excess of materials? The excess was returned to the manufacturer as you call him?

Answer: Correct.

Question: With respect to the sale of materials and fabrics by Daisart Sportswear Inc., those were not materials that were supplied to you by the manufacturer?

Answer: At times they were.

Question: It is customary for a manufacturer to supply sufficient materials in keeping with his marker, if you were able to save that it was an unwritten understanding that that material was yours to do with what you pleased? 3074

Answer: That would be so with wearing apparel.

Question: And with respect to ammunition bags?

Answer: Since the ammunition bags were never in a set or standard size, the waste in most instances almost equalled the amount actually used.

Question: Were you supplied with markers for these ammunition bags?

Answer: We were not.

Question: And did the manufacturer or person having the contract with the U. S. Government know that the fall away or waste that you saved in the cutting represented almost as much as the actual material used in cutting? 3075

Answer: They did.

Question: Did the manufacturer having the contract with the U. S. Government make any claim of Daisart Sportswear Inc., with respect to this fall away?

Answer: On any number of occasions when materials
33076 were short, we used it for that but they, at all times, knew that it was their material.

Question: What procedure was followed by Daisart, did the manufacturer bill Daisart Sportswear Inc., for material?

Answer: Never.

Question: Did it consign it?

Answer: Simply shipped it for the use.

Question: And how did Daisart Sportswear Inc., bill the manufacturer for the finished garments?

Answer: For so many finished garments.
33077

Question: So that with respect to Daisart Sportswear Inc., contracting activities on ammunition bag materials, were shipped by the manufacturer without bill?

Answer: It was not. Metals Disintegrating Company being a foreign concern and being unable to furnish this material, they asked me to purchase materials for them. They were aware that I cannot do that without proper priorities. Those priorities were forthcoming in a blanket sum. No stipulated amount and I was further told to maintain a constant stock for any orders they may call. I mean Daisart Sportswear Inc., for any orders they may
33078 call for. Their orders came to me sometimes dated and never in any set size or specified form. They charged from day to day. I then went about purchasing material for their work. When and if I had a surplus, I would notify them and ask them if they had anything immediately on hand as I am overstocked, at which time they told me they had not and to dispose of it.

Question: This is a voluntary statement. You do not claim immunity with respect to that statement?

Answer: No.

Question: I assume that anything you tell us, Mr. Smith, 3079
is subject to verification? You state that after a time Metals Disintegrating Company, although it had a contract with the government, was not in a position to furnish you with the materials necessary for Daisart to manufacture this item?

Answer: Right.

Question: And that because of that situation, Daisart was required to obtain priorities so that Daisart could obtain the materials and that it did so?

Answer: In a blanket amount.

Question: And that pursuant to that priority, Daisart 3080
thereafter acquired materials, some of which were used in the manufacture of ammunition bags for Metals, and some of it was disposed of by Daisart, is that correct?

Answer: Yes.

Question: And those disposals by Daisart formed a good part of the sales of fabrics made by Daisart?

Answer: They did.

Question: Now, is it not a fact that Daisart Sportswear Inc., back in October, 1945, was visited by investigators of the Office of Price Administration?

Answer: No. No investigators. To the best of my knowledge, never. 3081

Question: What did Daisart Sportswear have at 99 Central Avenue?

Answer: Plant consisting of two floors, shipping room, etc.

Question: Did Daisart Sportswear Inc., have any additional plants?

Answer: Never had. Additional space from time to
3082 time.

Question: Where?

Answer: I forgot the name of the street, about four blocks from the plant. About four blocks on Sussex Avenue, used for storage of various items then engaged in by Daisart Sportswear Inc.

Question: You state that Daisart Sportwear Inc., records after the secession of business in October, 1945, were transmitted to 111-14th Avenue, Belmar, containing records?

3083 Answer: No bills or invoices.

Question: And that the property was subsequently sold? And at that time the president of Daisart Sportswear Inc., was in California?

Answer: Correct.

Question: And pursuant to his instructions records were removed from 111-14th Avenue?

Answer: Not the records, personal belongings were removed and were to have included these records and they we e then taken to Robert Treat Hotel.

Question: To whom did you give instructions for the moving of your personal belongings and including Daisart
3084 records?

Answer: A previous employee. Russel Baker. He was authorized to contract from the Hertz Drive Yourself of Plane Street, which he did and delivered it to me.

Question: He carried out your instructions?

Answer: He did.

Question: Is Russel Baker related to Jeffrey Baker?

Answer: He is colored.

Government's Exhibit 147A

Question: Do you know where Russel Baker is now?

Answer: The last I heard of him he was confined in a 3085
hospital. That was about four weeks ago.

Question: You stated that Daisart Sportswear Inc., in addition to its plant at 99 Central Avenue, occupied other space for storage purposes?

Answer: I did.

Question: Who was the lessor?

Answer: I do not know. The lease was subsequently broken in two months. Place in bad condition.

Question: What happened to the lease for 99 Central Avenue?

Answer: The entire plant was sold including the lease. 3086

Question: To whom?

Answer: Sold to L & L Sportswear.

Question: Do you have the original lease from the Realty Management?

Answer: No, I do not.

Question: Does Daisart Sportswear or any of its officers or stockholders?

Answer: None whatsoever.

Question: Or any of the persons who comprise Daisart Sportswear Inc., presently employees of L & L?

Answer: None. They never even operated since I sold 3087
the place.

Question: Who consummated the transaction with Daisart and L. & L?

Answer: I did.

Question: Where did L & L Sportswear come from?

Answer: New York City.

Government's Exhibit 147A

Question: With what group or individual of L & L
3088 Sportswear did you consummate that transaction?
Answer: Joseph Greenberg or Greenbaum.
Question: L. & L. Sportswear, is that a manufacturer?
Answer: What kind, I do not know.
Question: What did they do in New York City?
Answer: I do not know.
Question: What their address was?
Answer: I do not know. I did not know they were from New York, deal consummated through an agent.

3089

3090

Notice of Appeal

FORM OF APPEAL UNDER RULE III

3091

FORM NO. 1

(To be used on appeals to the United States Circuit Court of Appeals.)

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

C126-295

C125-239

C125-240

3092

UNITED STATES OF AMERICA,

—against—

DAISART SPORTSWEAR, INC., GEORGE SMITH, ALBERT J. DEEB,

Names and Addresses of appellants:

Daisart Sportswear, Inc.
39 Central Avenue, Newark, N. J.

3093

George Smith
136 Lakeside Avenue, Verona, N. J.

Albert J. Deeb
540 4th Street, Brooklyn, N. Y.

Notice of Appeal

Names and addresses of appellants' attorneys:

3094

Walter R. Hart, Esq. represents Daisart Sportswear, Inc. and George Smith
66 Court Street, Brooklyn, N. Y.

Morris Siegel, Esq. represents Albert J. Deeb
220 Broadway, New York, N. Y.

Offense:

Illegal use of priorities; diversion of materials; conspiracy to violate the Maximum Price Regulations of O. P. A.

3095

Date of Judgment:

December 3, 1947.

Brief description of judgment or sentence:

Daisart Sportswear, Inc. Fined $10,000

George Smith—3 years imprisonment and fined $10,000

Albert J. Deeb—1 year and 1 day imprisonment and fined $20,000.

3096

Notice of Appeal

We, the above-named Appellants, hereby appeal to the United States Circuit Court of Appeals for the Second Circuit from the judgments above-mentioned on the grounds set forth below. 3097

WALTER R. HART
Attorney for Daisart Sportswear, Inc. and George Smith.

MORRIS SIEGEL
Attorney for Albert J. Deeb.

Dated: Dec. 3, 1947. 3098

3099

Stipulation

UNITED STATES CIRCUIT COURT OF APPEALS

3100

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

—against—

DAISART SPORTSWEAR, INC. GEORGE SMITH and ALBERT J. DEEB,

Defendants-Appellants.

3101

The appellants herein and their counsel have represented and hereby represent to the appellee:

(1) That this transcript of the record contains all matter necessary fairly to present their points and such points as are relevant in reply.

(2) That in so far as the transcript of record purports to contain the stenographic minutes of proceedings, the minutes are set forth accurately, and omissions, if any, are clearly marked. Such omissions are only

3102

of matter wholly immaterial to any question raised on this appeal.

(3) That all exhibits exclusive of Exhibit 147A which is printed heretofore are omitted.

(4) That the transcript of the record contains all matters required to be set forth by applicable rules.

Stipulation

In reliance upon these representations it is hereby stipulated and agreed by the undersigned that the foregoing is 3103
a true copy of the transcript of record of the District Court for the Southern District of New York in the above entitled matter as agreed on by the parties, and further, that all the exhibits pertaining to this cause not reproduced herein, may be submitted to the Court upon the argument of the appeal, with the same force and effect as if reproduced herein and, further, if it should appear to the appellee that matter properly a part of the transcript of record has been omitted and has become material, despite the representations herein made, the appellee may, at its option, reprint such matter as an appendix to its brief or may require the 3104
appellants to reprint such matter, and use such matter with the same force and effect as if reproduced herein.

Dated: March 8, 1948.

MORRIS SIEGEL,
Attorney for Defendant-Appellant, Albert J. Deeb.

WALTER R. HART,
Attorney for Defendants-Appellants, Daisart Sportswear, Inc. and George 3105
Smith.

JOHN F. X. MCGOHEY,
United States Attorney for the Eastern District of New York, Attorney for Appellee.

Stipulation as to Record

UNITED STATES DISTRICT COURT

3106

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

IT IS HEREBY STIPULATED AND AGREED that the foregoing is a true copy of the transcript of the record of the said District Court on the above-entitled matter, as agreed on by the parties.

3107

Dated: March 16, 1948.

WALTER R. HART,
Attorney for Appellants Daisart Sportswear, Inc. and George Smith.

MORRIS SIEGEL,
Attorney for Appellant Albert J. Deeb.

HON. JOHN F. X. MCGOHEY,
United States Attorney, Attorney for Appellee.

3108

Clerk's Certificate

UNITED STATES DISTRICT COURT 3109

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK, *ss.*:

I, WILLIAM V. CONNELL, Clerk of the District Court of the United States of America for the Southern District of 3110
New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties. The last day to file this record is March 20, 1948.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 7 day of March in the year of our Lord one thousand nine hundred and forty-eight and of the Independence of the said United States the one hundred and seventy-second.

3111

WILLIAM V. CONNELL,
Clerk.

[Seal]

[fol. 1038] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1947

No. 268

(Argued May 3, 1948. Decided August 23, 1948)

Docket No. 20978

UNITED STATES OF AMERICA, Respondent-Appellee

v.

DAISART SPORTSWEAR, INC., GEORGE SMITH, and ALBERT J. DEEB, Defendants-Appellants

Before L. Hand, Swan and Clark, Circuit Judges

Appeal from the District Court of the United States for the Southern District of New York

Daisart Sportswear, Inc., George Smith, and Albert J. Deeb were convicted, under § 301 of the Second War Powers Act, 50 U. S. C. A. Appendix, § 633, of unlawfully extending preference ratings in the purchase of textiles and of illegally diverting the textiles so procured, and, under 18 U. S. C. A. § 88, of having conspired to violate the Emergency Price Control Act of 1942, 50 U. S. C. A. Appendix, § 901 *et seq.*, [fol. 1039] by selling finished piece goods at prices in excess of the ceilings established by law; and they appeal.

Affirmed as to Daisart Sportswear, Inc., and Albert J. Deeb; affirmed in part and reversed in part as to George Smith.

Walter R. Hart, of Brooklyn, N. Y. (Louis Timberg on the brief), for defendant-appellant Smith.

Morris Siegel, of New York City, for defendant-appellant Deeb.

Frederick H. Block, Asst. U. S. Atty., of New York City (John F. X. McGohey, U. S. Atty., and Bruno Schachner, Asst. U. S. Atty., of New York City, on the brief), for respondent-appellee.

CLARK, Circuit Judge:

The appellants, Daisart Sportswear, Inc., George Smith, and Albert J. Deeb, were charged with two offenses by two

separate informations for misusing priorities established under § 301 of the Second War Powers Act, 50 U. S. C. A. Appendix, § 633; and in addition they were indicted, under 18 U. S. C. A. § 88, for conspiring to violate the Emergency Price Control Act of 1942, 50 U. S. C. A. Appendix, § 901 *et seq.* The first information was of forty-one counts, and it in substance alleged that defendants had unlawfully and wilfully failed to utilize textiles, received as a result of the application of extension ratings, for a prescribed or permitted use. The second information, of a like number of counts, alleged that defendants had unlawfully and wilfully [fol. 1040] applied and extended preference ratings for textiles which they were not entitled to apply or extend.[1] Finally, the indictment charged them with conspiring to sell finished piece goods at prices in excess of the maximum established therefor.

The indictment and the two informations were consolidated for trial. All of the defendants were found guilty on the indictment. On the two informations, however, certain counts were eliminated either by action of the court or upon verdict of not guilty, so that Smith and the corporation were found guilty on only thirty-five counts of each, while Deeb was found guilty on but five counts of each. Fines aggregating $710,000 were thereupon imposed on the corporation and Smith, and in addition Smith was sentenced to a total of three years' imprisonment. Deeb was fined a total of $20,000 and sentenced to imprisonment for a year and a day.

Viewing the evidence in its aspect most favorable to support the jury's verdict, *Phelps* v. *United States*, 8 Cir., 160 F. 2d 858, 868, rehearing denied *Peters* v. *United States*, 8 Cir., 161 F. 2d 940, we may treat the following facts as established; Smith was secretary of Daisart Sportswear, Inc., and Deeb was a salesman for it. During the years 1944 and 1945, the defendants applied and extended certain priority ratings of the War Production Board, originally granted to the Metals Disintegrating Company,

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[1] These terms are explained in *United States* v. *Bradford*, 2 Cir., 160 F. 2d 729, certiorari denied 331 U. S. 829. A preference rating is *applied* by the original recipient to obtain commodities from a supplier who then *extends* (uses) the rating to secure the needed commodities from sub-suppliers.

for the purpose of obtaining certain materials. The defendants certified that the goods were to be used for the manufacture of ammunition powder bags for the Army and, by using top priorities, acquired some two and a half million [fol. 1041] yards of piece goods. Actually, however, they used only 49,000 yards for the certified purpose, which required a canvas material of a grayish white duck color. The bulk of the goods acquired, including fabrics of all sorts of descriptions and colors, was diverted to civilian handkerchief, dress, negligee, and raincoat manufacturers at prices in excess of the ceilings.

While various issues have been raised on this appeal, there is only one which presents a serious question; namely, whether the defendant Smith gained immunity as a result of testifying before an official of the Office of Price Administration in response to a subpoena issued by that office. His appearance before that agency was on April 30, 1946, or nearly a year before the present charges were made, and was pursuant to two subpoenas served upon him—one in his individual capacity, and the other as an officer of the defendant corporation. By these he was required to produce all purchase records, sales records, invoices, journals, ledgers, cash disbursements books, accounts receivable ledgers, accounts payable ledgers, and all other records and documents of, either himself individual; or the corporation pertaining to the purchase, sale, manufacture, fabrication, and/or finishing piece goods, materials, and fabrics from January 1, 1945, to the time of the examination. He appeared at the examination with counsel and took the oath as witness. Next the OPA official explained to him that he could not be compelled to make any incriminating statements and that he had certain constitutional guarantees. The questioning then followed.

After a few questions of a preliminary nature and before any matter germane to the present issue had been educed, however, Smith asserted a claim of "privilege as to anything that I say." In response to further questions he explained his failure to produce any of the records required [fol. 1042] by the subpoenas on the ground that they had been either destroyed or lost or misplaced. During the course of the examination he stated that the defendant corporation was a contractor for the Metals Disintegrating Company, which in turn was under contract to manufacture

ammunition bags directly for the United States Government. Since the company was unable to purchase materials, it, so he said, had asked him to do so and provided him with a blanket priority rating for that purpose. Accordingly, as he testified, he maintained a constant stock of material, and would manufacture the ammunition bags as orders were received from the Metals Disintegrating Company. He also brought out that his corporation was a contractor for many other concerns as well, naming in all five companies. He further revealed the names of three concerns from which he had purchased fabrics—A. Steinam & Co., L. Lazarus & Co., and Southeastern Cottons. These figured in some fifteen counts of each information, and at the trial, as sellers in making purchases from whom the defendants had illegally extended specific preference ratings. Other disclosures included the name of the bank upon which the corporate checks were drawn in paying for such purchases, the selling of materials and fabrics, and the method of establishing the price for such sales.

"All this Smith asserts to be vitally important evidence which went to the very heart of the matters on which his conviction rests and for which he claims immunity under § 202(g) of the Emergency Price Control Act of 1942, 50 U. S. C. A. Appendix, § 922(g). This provides that no person shall be excused from complying with any requirements to testify under the act "because of his privilege against self-incrimination," but the immunity provisions of the Compulsory Testimony Act of February 11, 1893, 49 U. S. C. A. § 46, shall apply "with respect to any individual who spe- [fol. 1043] cifically claims such privilege." The Compulsory Testimony Act provides that no person shall be excused from testifying before the Interstate Commerce Commission on the ground of this privilege and then continues: "But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said commission, or in obedience to its subpoena, or the subpoena of either of them, or in any such case or proceeding," except for perjury committed in so testifying. Smith's position is that, since he was compelled to make the disclosures detailed above, he must be granted the immunity from prosecution provided by statute.

In examining this contention we shall initially consider the charges contained in the two informations. As we have seen, the first alleged that defendants had unlawfully failed to utilize textiles obtained under preference ratings for the purposes certified, while the second alleged that they had unlawfully and wilfully applied and extended preference ratings for textiles. In proof of these charges the prosecution would necessarily show the dealings with the Metals Disintegrating Company, the use of a blanket preference rating to obtain the desired commodities, the companies from which the materials had been purchased, the disposal of the surplus stock, and the companies to which it had been sold. Except for the last, Smith gave information as to all of these matters on his OPA examination. His claim of immunity would therefore be clear except for the circumstance, now to be stated, of his waiving immunity as to a part of his testimony.

He had already testified generally to all the elements stated above—except the names of purchasers of the surplus which he never did disclose—when he volunteered the [fol. 1044] following, supplementing not too responsively an answer he had just made to a specific question: "Metals Disintegrating Company being a foreign concern and being unable to furnish this material, they asked me to purchase materials for them. They were aware that I cannot do that without proper priorities. Those priorities were forthcoming in a blanket sum. No stipulated amount and I was further told to maintain a constant stock for any orders they may call. I mean Daisart Sportswear Inc., for any orders they may call for. Their orders came to me sometimes dated and never in any set size or specified form. They charged from day to day. I then went about purchasing material for their work. When and if I had a surplus, I would notify them and ask them if they had anything immediately on hand as I am overstocked, at which time they told me they had not and to dispose of it." Then the examiner said: "This is a voluntary statement. You do not claim immunity with respect to that statement?" to which the answer was, "No." There followed certain explanatory answers, set forth in the margin,[2] which reiterated the use

[2] "Question: I assume that anything you tell us, Mr. Smith, is subject to verification? You state that after a

[fol. 1045] by Daisart of the blanket preference ratings to obtain material and the disposal of the material by sale.

While this account thus to a certain extent overlapped testimony previously given it was at once a clearer, more connected, and more succinct statement of Smith's and the Daisart method of operation than had previously been disclosed. It is well settled that the immunity extends only to *compelled* testimony and, indeed, we have applied the doctrine of waiver of immunity under circumstances where the intent of the witness was less clear than here. *United States* v. *DeLorenzo*, 2 Cir., 151 F. 2d 122. Even where this testimony repeated previous answers which would have been subject to the witness' initial general claim of immunity, we see no reason why a witness cannot qualify and limit his claim as the examination proceeds, just as he can make new claims as to issues he has not waived. The Government indeed contends that the waiver should be held to cover all the testimony extracted so as not to bar this prosecution in any way. We think, however, that this would go beyond the intent of the witness and clearly beyond what the examiner understood and acted upon at the time. A more reasonable approach is to apply the waiver to the extent and in accordance with the intent of the witness, as the examiner accepted it at the time.

So viewed, we must note that here he does not repeat or indeed specifically mention the companies from which Daisart had purchased material. He does refer to certain mat-

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tinse Metals Disintegrating Company, although it had a contract with the government, was not in a position to furnish you with the materials necessary for Daisart to manufacture this item?

"Answer: Right.

"Question: And that because of that situation, Daisart was required to obtain priorities so that Daisart could obtain the materials and that it did so?

"Answer: In a blanket amount.

"Question: And that pursuant to that priority, Daisart thereafter acquired materials, some of which were used in the manufacture of ammunition bags for Metals, and some of it was disposed of by Daisart, is that correct?

"Answer: Yes.

"Question: And those disposals by Daisart formed a good part of the sales of fabrics made by Daisart?

"Answer: They did."

ters upon which were based some of the counts of the informations upon which conviction was had. Thus his volunteered statement disclosed the dealings with the Metals Disintegrating Company and the use of a blanket preference rating, as well as the disposal of surplus stock. His conviction on counts dealing only with this much of the disclosed information must therefore stand. But since he has not [fol. 1046] waived immunity in respect to his earlier disclosure that A. Steinain & Co., L. Lazarus & Co., and Southeastern Cottons were sellers to the corporation, he cannot be prosecuted on the counts based on transactions with those companies. Specifically, then, his conviction on the following counts on each information must be reversed, namely, Counts 1-4, 7, 11, 14, 16, 17, 20, 24, 30.

The Government maintains that, since the questions asked went to what the corporation did, rather than to what Smith had done, he relinquished no privilege in testifying, and hence was not entitled to immunity. It is clear, however, that his answers, at least in part, incriminated him, and to that extent he must be granted immunity. It is true a corporate officer may be compelled to produce corporate records even though they tend to incriminate him, *Wilson* v. *United States*, 221 U. S. 361, Ann. Cas. 1912D 558, and may even be compelled to testify as to the genuineness of corporate documents, *United States* v. *Austin-Bagley Corp.*, 2 Cir., 31 F. 2d 229, certiorari denied *Austin-Bagley Corp.* v. *United States*, 279 U. S. 863. Yet we do not believe that the principle of the *Austin-Bagley* case, *supra*, may be projected so that a corporate officer may be compelled to testify as to any and all phases of the corporation's activities, without at the same time obtaining a grant of immunity for the incriminating matter he is compelled to disclose.

The further point is made that Smith, in effect, but summed up what the books of the corporation contained. Coupled with this is the contention that an individual may be compelled to give oral testimony that is explanatory of his records. *Fleming* v. *Silverman*, D. C. Ill., 7 F. R. D. 29. We recognize that if Daisart had been required to submit reports pursuant to OPA's record-keeping requirements, then Smith could not claim immunity if compelled to produce them. *Shapiro* v. *United States*, 68 S. Ct. 1375. We [fol. 1047] think, though, the production of records must be distinguished from oral testimony as to what the records

would contain, had they been produced. Some language in *Fleming* v. *Silverman, supra,* as well as *Porter* v. *Heend,* D. C. Ill., 6 F. R. D. 588, may tend to support the Government's position; yet, in the former case, it was expressly found that the defendant had not disclosed incriminating facts, and the latter involved the process of discovery in the serving of interrogatories upon the defendant. The court's reasoning in the latter case is that, since the Government could have compelled the submission of the records, it could require the defendant to answer interrogatories detailing information contained in the records. Both were civil cases, not dealing with the imposition of criminal penalties. Here the matter disclosed was incriminating, and there was no question of forcing the production of the records, since they were either lost or destroyed. In consequence the very matter that would incriminate had to be forced from the lips of the defendant himself, rather than obtained from the records or books.

On the principles we have stated, we think that Smith did not obtain immunity as to the crime charged in the indictment. The indictment charged the defendants with conspiracy to sell textiles at prices in excess of the established maximum prices and that as a part of the conspiracy they had sold finished piece goods in excess of such maximum prices. This was the essential gravamen of the indictment; other parts referred only to accessory details such as the issue of false invoices and invoices from fictitious sellers, the lack of proper invoices, the accepting of checks drawn to fictitious sellers, the failure to keep records required by the OPA. As we have seen, Smith in the statement he volunteered to the OPA examiner declared that he was told to dispose of the surplus material he had on hand, and further [fol. 1048] that such disposals formed a good part of the sale of fabrics made by Daisart. This supplemented earlier statements that Daisart had not bought textiles for the sole purpose of reselling, but had sold only surplusages, and that "since it was surplus, it was sold at the price billed to me plus freight and haulage and less discount allowed to me."[3]

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[3] Reiterated in the next question and answer, viz., "Question: In other words, Daisart Sportswear Inc., sold at cost plus freight less any discounts, cash or otherwise, received by Daisart Sportswear Inc.? Answer: Correct."

It will be seen that the matter just quoted is the only matter not explicitly included in the volunteered statement; immunity, if any, must attach solely by reason of it. There is no contention that this was an overceiling price; in fact there was testimony for the prosecution to the contrary, and the prosecutor in summation and the Government's brief here rely on this as a statement of a sale within the ceiling prices.

How far immunity can be claimed to flow from a statement, however false in fact, showing or maintaining that one is observing the law may present an interesting question. Thus Wigmore suggests that "the privilege, by hypothesis, would have been violated only if the witness had truly confessed his crime, but if he denies it and falsely exonerates himself, he has confessed no fact 'against himself.'" 8 Wigmore on Evidence, 3d Ed. 1940, 504. Here, however, our question is somewhat different, namely, how far a witness partially waiving his immunity can reasonably be considered to have gone in so doing. The whole tenor of his volunteered statement is that he was making perfectly valid sales, just as he had previously explained; the fact that he does not here repeat the OPA formula (which was of course no news or no new lead to the examiner) should not now procure him an immunity which, as it seems clear to us, he did not intend at the time to claim.

[fol. 1049] It should be noted that here, as in *United States v. DeLorenzo, supra*, the actual testimony was not used to bring about the conviction itself. The court here limited the use of the transcript entirely to the case against the corporation whose officer Smith was and excluded it not only as to Smith, but also as to Deeb. It is true, as both individuals complain, that the prosecutor did refer to it in his summation as against them, and stated that the answer quoted above showed Smith's knowledge of the actual ceiling prices. But this was a slip to which no objection was made at the time. The court specifically and carefully charged that this testimony was not to be considered in any way in determining the guilt or innocence of Smith and Deeb.

The other errors as assigned may be disposed of briefly. We think the consolidation of the two informations and indictment for purposes of trial was proper. The consolidation complies with Rule 8(a), Federal Rules of Criminal Procedure; the offenses were certainly based on "transactions connected together." There was an identity of de-

fendants under all the charges, and the unlawful extension of preference ratings and the selling of the goods so obtained at overceiling prices were all part of a single scheme. *DeLuca* v. *United States*, 2 Cir., 299 F. 741, and *Castellini* v. *United States*, 6 Cir., 64 F. 2d 636, the only cases cited by defendants, will not assist them; the former was overruled, the latter (which is hardly in point here) was disapproved, in *United States* v. *Kelley*, 2 Cir., 105 F. 2d 912. See also *United States* v. *Antonelli Fireworks Co.*, 2 Cir., 155 F. 2d 631, certiorari denied 329 U. S. 742; *United States* v. *Gottfried*, 2 Cir., 165 F. 2d 360, certiorari denied *Gottfried* v. *United States*, 333 U. S. 860.

Deeb objects that the evidence was insufficient to connect him with the crimes for which he was convicted. But the evidence appears ample. True, Smith was the master [fol. 1050] figure in these illegal transactions, totaling thousands of dollars, as the court stated in meting out sentences to the accused. But Deeb had too close connection, by way of making actual sales, taking the proceeds, giving instructions on the Daisart letterhead as to materials, appearing as Smith's salesman, vouching for the fictitiously named persons through whom Smith operated, and so on, to allow him to appear not as a real principal, but only as a mere broker.

Finally, there was objection to certain charts prepared by an F.B.I. agent based on the evidence in the case, and the agent's testimony in respect thereto. The defendants contend that it is improper for a witness to summarize the evidence in such a fashion. But *United States* v. *Johnson*, 319 U. S. 503, 519, is authority for the propriety of such testimony.

Hence we affirm all convictions of Deeb and Daisart Sportswear, Inc., reverse the conviction of Smith upon Counts 1-4, 7, 11, 14, 16, 17, 20, 24, and 30 of each information, and affirm as to the balance as found by the jury. This will reduce the total amount of the fines levied upon Smith, but will not affect his prison sentence.

L. HAND, *Circuit Judge* (dissenting in part):

I agree with my brothers except as to the conviction of Smith upon the indictment, which I think ought also to be

reversed. The language of the act * is that no one shall be prosecuted "on account of any transaction * * * concerning which he may testify * * * in obedience to * * * subpoena." There can be no debate that Smith was questioned and testified "concerning" the prices at which the company [fol. 1051] sold; and, as the indictment was for conspiring to sell at higher prices than the regulations allowed, his testimony inevitably "concerned" the "transactions" charged in the indictment. On the other hand, not only did his answers not support the charge, but they at least tended to refute it: I shall assume that they did refute it. Laying aside the "waiver" for the moment, we should have to hold, in order to affirm the conviction, that, when it has been ascertained that a witness's answers to questions "concerning" a transaction," which may or may not be criminal will not incriminate him—*a fortiori* when they exculpate him—he must answer. It is true that this is in accord with the following passage in Wigmore,* although he was only giving the reasons why such statutes do not give immunity to a witness who answers falsely: "The privilege, by hypothesis would have been violated only if the witness had truly confessed his crime, but if he denies it and falsely exonerates himself, he has confessed no fact 'against himself'" and "his privilege has not been infringed by the actual answer." Apparently there are no decisions supporting this statement, and I cannot agree with it. The privilege, if it is to exist at all, must include all questions which are relevant to the witness's guilt, regardless of how he will answer them. Were it otherwise, the privilege itself would be conditional upon the answers, and the witness, in order to assert it, would be obliged to disclose whether he would deny or admit any guilt. It is precisely to protect him from that predicament that the privilege exists; indeed, the result would be to compel him, if he was in fact guilty, either to confess his guilt, or to add perjury to it.

I do not understand that we are committing ourselves to this position; on the contrary we are expressly refusing [fol. 1052] to do so; but this we do only because we hold that the "volunteered statement" included the "transactions" defined as crimes in the indictment. In doing so are we not

* §46, Title 49, U. S. C.

* Wigmore on Evidence, §2282(c).

giving to the only relevant passage in the "statement" a wider scope than is justified? All that it contained, touching the charge in the indictment, is the following passage: "When and if I had a surplus, I would notify them and ask them if they had anything immediately on hand as I am overstocked, at which time they told me they had not and to dispose of it." That did indeed allow the use of any of Smith's earlier or later testimony to the same effect, but as a "waiver" it went no further. The "statement" said nothing "concerning" the prices at which the "surplus" was sold, and Smith had already been questioned about those and had answered. I quote his testimony in the margin.* It seems to me that he did not "waive" his

*"Question: But you do state the fact to be that sales of materials and fabrics were made by Daisart Sportswear Inc.?

"Answer: Correct.

"Question: Can you tell me how Daisart Sportswear Inc., arrived at its selling price with respect to the items that it sold?

"Answer: Since it was surplus, it was sold at the price billed to me plus freight and haulage and less discount allowed to me.

"Question: In other words, Daisart Sportswear Inc., sold at cost plus freight less any discounts, cash or otherwise received by Daisart Sportswear Inc.?

"Answer: Correct.

"Question: For the year 1945, what was the dollar volume of sales of fabrics and materials made by Daisart Sportswear Inc.?

"Answer: I have no knowledge of that. Without records I cannot tell.

"Question: Are there such records available?

"Answer: There are not to my knowledge.

"Question: Can you tell the names of the persons or companies who purchased fabrics or piece goods or materials from Daisart Sportswear Inc.?

"Answer: Off hand I don't know. Not without consulting records.

"Question: You don't remember the names?

"Answer: Not off hand. I could name some, but I would rather not answer."

[fol. 1053] immunity by "volunteering" that all he sold was "surplus"; for a "waiver" must extend to all the essentials of the charge from whose prosecution the act gives him immunity. The sales price was the very kernel of that charge.

[fol. 1054] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 23rd day of August one thousand nine hundred and forty-eight.

Present: Hon. Learned Hand, Hon. Thomas W. Swan, Hon. Charles E. Clark, Circuit Judges.

UNITED STATES, Plaintiff-Appellee,

v.

DAISART SPORTSWEAR, INC., GEORGE SMITH and ALBERT J. DEEB, Defendants-Appellants

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed as to Daisart Sportswear, Inc. and Albert J. Deeb; and affirmed in part and reversed in part as to George Smith in accordance with the opinion of this court.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Alexander M. Bell, Clerk, by A. Daniel Fusaro, Deputy Clerk.

[fol. 1055] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. United States v. Daisart Sportswear, Inc., George Smith & Albert J. Deeb. 268. Judgment. United States Circuit Court of Appeals, Second Circuit. Filed Aug. 23, 1948. Alexander M. Bell, Clerk.

[fol. 1056] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 1057] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 6, 1948

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

No. 202

FEB 22

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1948

GEORGE SMITH,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

JULIAN C. TEPPER,
Attorney for Petitioner,
66 Court Street,
Brooklyn 2, New York.

WALTER R. HART,
LOUIS TIMBERG,
With him on the Petition.

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IN THE

Supreme Court of the United States

October Term, 1948

No. . . . .

GEORGE SMITH,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

TO THE HONORABLE THE CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA AND THE HONORABLE ASSOCIATE JUSTICES THEREOF:

Your petitioner, George Smith, respectfully submits this petition for a writ of certiorari directed to the Circuit Court of Appeals for the Second Circuit, to review the decision and judgment of the United States Circuit Court of Appeals for the Second Circuit in the above cause, affirming in part and reversing in part as to him a judgment of conviction in the District Court of the United States for the Southern District of New York, wherein the petitioner was convicted under Sec. 301 of the Second War Powers Act, 50 U. S. C. A. Appendix, Sec. 633, of unlawfully extending preference ratings in the purchase of textiles and of illegally diverting the textiles so procured, and, under

18 U. S. C. A. Sec. 88, of having conspired to violate the Emergency Price Control Act of 1942, 50 U. S. C. A. Appendix, Sec. 901 *et seq.*, by selling finished piece goods at prices in excess of the ceilings established by law.

The judgment of the Circuit Court of Appeals affirming in part and reversing in part the conviction of the petitioner was entered on August 23rd, 1948 (R. 1054).

Opinions Below

The District Court rendered no opinion. A majority opinion and a dissenting opinion, not yet officially reported, were rendered by the United States Circuit Court of Appeals, Second Circuit (R. 1038).

Jurisdiction

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 938, 28 U. S. C., Sec. 347a), and as modified, pursuant to the Act of March 8, 1934 (18 U. S. C., Sec. 688), by Rule XI of the Rules of Practice and Procedure after verdict in criminal cases (292 U. S. 661, 666).

Questions Presented

The petitioner, George Smith, together with the Daisart Sportswear, Inc., of which he was the sole officer, director and stockholder, and one, Albert J. Deeb, were charged with two offenses by two separate informations for misusing priorities established under Sec. 301 of the Second War Powers Act, 50 U. S. C. A. Appendix Sec. 633; and in addition they were indicted, under 18 U. S. C. A. Sec. 88,

for conspiring to violate the Emergency Price Control Act of 1942, 50 U. S. C. A. Appendix, Sec. 901 *et seq.* The first information was of forty-one counts, and it in substance alleged that the petitioner and the co-defendants had unlawfully and wilfully failed to utilize textiles, received as a result of the application of extension ratings, for a prescribed or permitted use. The second information, of a like number of counts, alleged that the petitioner and the co-defendants had unlawfully and wilfully applied and extended preference ratings for textiles which they were not entitled to apply or extend. Finally, the indictment charged them with conspiring to sell finished piece goods at prices in excess of the minimum established therefor.

The indictment and the two informations were consolidated for trial. All were found guilty on the indictment. On the two informations, however, certain counts were eliminated either by action of the court or upon verdict of not guilty, so that petitioner was found guilty on only thirty-five counts of each. Fines aggregating $710,000 were thereupon imposed on petitioner, and in addition he was sentenced to a total of three years' imprisonment.

On appeal to the United States Circuit Court of Appeals for the Second Circuit, the majority court (the opinion being written by Judge Clark and concurred in by Judge Swan), reversed the conviction of your petitioner upon Counts 1-4, 7, 11, 14, 16, 17, 20, 24, and 30 of each information, and affirmed as to the balance. This in effect reduced the fine by the sum of $240,000. but did not affect his prison sentence.

Learned Hand, Circuit Judge, in a dissenting opinion, agreed with the majority court except as to the conviction of your petitioner upon the indictment which in his opinion he stated ought also to have been reversed.

Petitioner contends that having testified under oath before an official of the Office of Price Administration in

obedience to a subpoena, on April 30, 1946, or nearly a year before the charges aforesaid were made against him, he thereby purchased immunity against prosecution under the Compulsory Testimony Act of February 11, 1893, U. S. C. A., Title 49, Section 46, concerning the transactions, matters and things, to which he testified and which the Government made the basis of the charges set out in the informations and indictment, leading to his conviction. The principal and sole questions therefore are:

1: Did the immunity gained by the petitioner by virtue of the Compulsory Testimony Act of February 11, 1893, U. S. C. A. Title 49, Sec. 46, apply only to the use of the actual testimony given by the petitioner at the hearing before an official of the Office of Price Administration, or did it extend to all charges, the proof of which was made dependent upon leads given by the petitioner in his testimony before the aforesaid official which resulted in his ultimate conviction.

2: May it be contended that the limited volunteered statement (quoted as a footnote below) given by the peti-

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"Question: So that with respect to Daisart Sportswear Inc, contracting activities on ammunition bag materials, were shipped by the manufacturer without bill?

Answer: It was not. Metals Disintegrating Company being a foreign concern and being unable to furnish this material, they asked me to purchase materials for them. They were aware that I cannot do that without proper priorities. Those priorities were forthcoming in a blanket sum. No stipulated amount and I was further told to maintain a constant stock for any orders they may call for. Their orders came to sometimes dated and never in any set sixe or specified form. They charged from day to day. I then went about purchasing material for their work. When and if I had a surplus, I would notify them and aske them if they had anything immediately on hand as I am overstocked, at which time they told nie they had not and to dispose of it.

Question: This is a voluntary statement. You do not claim immunity with respect to that statement?

Answer: No."

tioner on the hearing before an official of the office of Price Administration, which was found by the Court to operate as a waiver of his immunity, was broad enough to justify the decision of the Majority Court in the affirmance in part of the conviction of the petitioner.

3: May it be contended that the immunity granted to the petitioner under the Compulsory Testimony Act of February 11, 1893, U. S. C. A. Title 49, Sec. 46, is lost where he, in response to the question put to him by the official of the Office of Price Administration, refused to incriminate himself and instead refuted the accusation. (This question is the one raised by Judge Learned Hand in his dissenting opinion.)

4: Did the holding of the Circuit Court that the offenses with which the petitioner and co-defendants were charged were offenses based on "transactions connected together", and that there was an identify of defendants under all the charges, permit the court below to sanction a dismissal of some of the counts hereinabove mentioned in each of the informations, and at the same time uphold the conspiracy indictment which related to the "transactions connected together" with the charges set out in the two informations, or should the court have dismissed the indictment of conspiracy because the conspiracy flowed and was inseparable from the charges in the information.

Statement

The petitioner, on April 30, 1946, in response to a subpoena, appeared before an official of the Office of Price Administration, accompanied by his counsel. Petitioner, after being duly sworn as a witness, and after stating his

name, address, place of business and his connections with the predecessor to the Daisart Sportswear, Inc., advised the representative of the Office of Price Administration who conducted the investigation that he was claiming his right of immunity under the relevant Statute, and that such claim of amnesty would apply on all questions thereafter put to him on such examination and the answers made by him in response thereto.

On this subject the following colloquy took place:

"Mr. Turtz (Official of O.P.A. conducting the inquiry): At this point, Mr. Smith stated that he thought he had a blanket privilege. Mr. Turtz stated that no privilege having been claimed up to this point no immunity would result with respect to the answers made to the questions propounded.

Mr. Smith: I want to claim privilege as to anything that I say.

Mr. Turtz: Up to this point in the record there has been no claim made by you with respect to any privilege or immunity?

Mr. Smith: Correct.

Mr. Turtz: Your counsel has stated to you that with respect to any question which you feel the answer will tend to incriminate you, you have to make the request for privilege yourself. In other words, at this point, Mr. Smith, you are making a request for privilege with respect to any question that I propound to you, except as to those questions which I have already propounded?

Answer: That correct" (pp. 1011, 1012).

The 5th Amendment to the Constitution of the United States provides:

"Nor shall any person be compelled in any criminal case to be a witness against himself."

By specific provision of the Emergency Price Control Act, 50 U. S. C. A. Appendix 922 (g), it is provided that no person shall be excused from complying with any requirements under this Section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893, U. S. C. A. Title 49, Section 46, shall apply with respect to any individual who specifically claims such privilege. 49 U. S. C. A. 46, so far as pertinent here, reads as follows:

"No person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements, and documents before the Interstate Commerce Commission, or in obedience to the subpoena of the commission, whether such subpoena be signed or issued by one or more commissioner, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the preceding chapter on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said commission, or in obedience to its subpoena, or the subpoena of either of them, or in any such case or proceeding: Provided, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying."

A perusal of the testimony given by your petitioner before an official of the Office of Price Administration (Government's Exhibit 147-A, p. 1009), will disclose that the petitioner was plied with various questions and that the answers given by him had a telling effect in the sense that his evidence had been used to work up the case against him; in short, that he had been compelled by that testimony to supply the facts on which the Government a year later predicated the informations and indictment and later proved his guilt.

Petitioner revealed that prior to 1944 he conducted business under the assumed name of Daisart Manufacturing Company; that thereafter Daisart Sportswear, Inc., a New Jersey corporation, succeeded to the business of the Daisart Manufacturing Company; that he was the sole stockholder, officer and director of Daisart Sportswear, Inc.; that Daisart Sportswear, Inc. was engaged in the business of manufacturing, purchasing and selling of textiles and kindred products; that Daisart Sportswear, Inc. was a contractor for the Metals Disintegrating Company which was under contract to manufacture ammunition bags directly for the United States Government; that it was also a contractor for many other concerns, to wit:

Lenn Sportswear, Inc.
Mickey Finn Clothing
Kit Packing Co.
London H. C. Co.
London Vest Co.

He also revealed the names of the concerns to whom he extended said priorities, to wit:

A. Steinman & Co., 4th Ave., New York City,
L. Lazarus & Co., New York City,
Southeastern Cottons,

and testified that Dausart Sportswear, Inc. received invoices from these suppliers in connection with the purchase of goods; that payment for the purchase of material was made by corporate check drawn on its bank, namely, Fidelity Union Trust Company, Newark, New Jersey.

In order to obtain a conviction under the informations it was incumbent upon the Government to establish the following facts:

A. The dealings with the Metal Disintegrating Company.

B. The use of blanket preference rating to obtain the desired commodities.

C. The companies from which the materials had been purchased.

D. The disposal of the surplus stock.

E. The companies to which it had been sold.

In order to obtain a conviction under the indictment it was incumbent upon the Government to establish the following facts:

A. That he was in possession of certain textiles.

B. That he sold textiles.

C. That the sale price was in excess of the permissible maximum price.

An examination of the Government's Exhibits 155-158 inclusive, which were prepared by an accountant emanating from the F.B.I. reveals how the government was able to

build up its case from the clues furnished by your petitioner. These exhibits consist of schedules indicating, among other things, the names of the concerns from which your petitioner had purchased merchandise under priority orders, and the sales made by your petitioner. This is particularly so in reference to exhibit 158, which relates to separate counts of the information and the indictment, and traces the goods from your petitioner's suppliers to his ultimate buyers. The buyers were traced as a result of an examination of the books of the suppliers, to wit, Steinman, Southeastern and Lazarus. Suffice it to say that a study of the exhibits mentioned will disclose the fact that your petitioner's testimony elicited from him by the official from the Office of Price Administration, which among other things revealed that he purchased goods from Steinman, Lazarus and Southeastern, furnished the clues which led the government directly to the purchasers.

The court below predicated the affirmance of the conviction in part on the ground that the limited "volunteered statement" given by the petitioner before the official of the Office of Price Administration appearing earlier in a footnote, operated as a waiver of the immunity granted to him under the Compulsory Testimony Act. A reading of the "volunteered statement" indicates that the corporation, Daisart Sportswear, Inc., of which your petitioner was an official, was asked to purchase material for the Metal Disintegrating Co.; that the Daisart Sportswear, Inc. was without proper priorities; that the priorities were furnished to the Daisart Sportswear, Inc. by the Metal Disintegrating Co. in blanket sums; that they were charged from day to day; that Daisart Sportswear, Inc. purchased material for its needs and that when there was a surplus the Daisart Sportswear, Inc. would notify the Metal Disintegrating Co. of the same, at which time it was told to

dispose of it. As pointed out by Judge Learned Hard in his dissenting opinion "a 'waiver' must extend to all the essentials of the charge from whose prosecution the act gives him immunity." This limited volunteered statement did not furnish the Government with sufficient evidence to establish all of the elements above set forth which it was obliged to prove in establishing its charges under the information and the indictment. Those elements, in a great measure, were furnished to the Government or the leads thereof were furnished to the Government through answers given by your petitioner, either prior or subsequent to the "volunteered statement" when questioned by the official from the Office of Price Administration. And it is to be recalled that at the very outset of the hearing your petitioner claimed immunity as to all answers he may thereafter give.

Judge Learned Hand predicated his dissent as to the conviction of your petitioner upon the indictment and voted for reversal with respect thereto on the ground that since it charged your petitioner and divers other persons with wilfully selling and delivering goods at prices over and in excess of the maximum ceiling price, any questions put to your petitioner by the official of the Office of Price Administration on the hearing had before him, as aforesaid, "on account of any transaction * * * concerning which he may testify * * * in obedience to * * * subpoena", even though answered by your petitioner without admitting his guilt, but rather protesting his innocence, operated to grant him immunity under the Compulsory Testimony Act of February 11, 1893 (U. S. C. A. Title 49, Sec. 46). In this connection Judge Learned Hand stated:

> "The privilege, if it is to exist at all, must include all questions which are relevant to the witness's guilt,

regardless of how he will answer them. Were it otherwise, the privilege itself would be conditional upon the answers, and the witness, in order to assert it, would be obliged to disclose whether he would deny or admit any guilt. It is precisely to protect him from that predicament that the privilege exists; indeed, the result would be to compel him, if he was in fact guilty, either to confess his guilt, or to add perjury to it." (Dissenting Opinion, Judge Learned Hand.)

Specification of Errors

The court below erred:

(1) in holding that the immunity afforded your petitioner by virtue of the Compulsory Testimony Act of February 11, 1893 (U. S. C. A. Title 49, Sec. 46), did not apply to the informations and the indictment as a whole, where the proof in support of which was obtained by leads rather than by direct testimony given by your petitioner in his testimony before the official of the Office of Price Administration.

(2) in its misconception of the import of the testimony of your petitioner, earlier quoted here as a footnote, by construing it to be a "voluntary statement" outside of the general claim made by your petitioner at the outset of the hearing before the official of the Office of Price Administration, that all testimony given by him at the hearing was to be considered under the protective privilege of the immunity statute.

(3) in holding that your petitioner gained no immunity upon the indictment under the Compulsory Testimony Act

of February 11, 1893 (U. S. C. A., Title 49, Sec. 46), where in response to a question put to him by the official of the Office of Price Administration relating to the selling prices at which he disposed of the finished piece goods he refused to incriminate himself and instead suggested his innocence. (We reiterate, this question is the one raised by Judge Learned Hand in his dissenting opinion.)

Reasons Relied on for Allowance of the Writ

The Circuit Court of Appeals erroneously misconceived the purpose of the immunity statute. A brief review of the history of the statutes governing the provisions for immunity to a natural person as co-extensive with the immunity guaranteed under the Fifth Amendment of the United States Constitution is enlightening. Government agencies found themselves obstructed in the prosecution of suits against individuals and corporations because of witnesses claiming their constitutional privilege under the Fifth Amendment. Therefore, in order to aid the Government in obtaining necessary evidence, Congress adopted the Immunity Statute of February 25, 1868 (R. S. #860) which, in brief, provided that no evidence obtained from a witness could be used against him in a criminal proceeding.

In *Counselman* v. *Hitchcock*, 142 U. S. 547, the Supreme Court declared this Immunity Statute unconstitutional because the immunity granted thereby was not co-extensive with the Fifth Amendment. The Court pointed out on page 564 that the Statute would not

> "prevent the use of his testimony to search out other testimony to be used in evidence against him or his property, in a criminal proceeding in such Court. It could not prevent the obtaining and the use of wit-

nesses and evidence which should be applicable directly to the testimony which he might give under compulsion, and on which he might be convicted, when otherwise, and if he refused to answer, he could not possibly have been convicted."

A new statute was then passed by Congress, the Act of February 11, 1893, and incorporated in the Emergency Price Control Act of 1942 (Section 202, subdivision g).

This act was declared constitutional in *Brown* v. *Walker*, 161 U. S. 591, holding that the Fifth Amendment does not deprive Congress of the power to compel the giving of testimony or the production of books and records, even though said testimony or books and records might incriminate the witness, *provided* that immunity be accorded the witness and that said immunity was complete and in all respects commensurate with the protection guaranteed by the constitutional limitation. The Court stated that this immunity statute was one of general amnesty and the desired protection of the Constitution was fully accomplished.

This holding was reiterated by the Supreme Court in numerous other cases including *Glickstein* v. *United States*, 222 U. S. 139, wherein the Court stated on page 141:

"It is undoubted that the constitutional guaranty of the Fifth Amendment does not deprive the lawmaking authority of the power to compel the giving of testimony, even though the testimony, when given, might serve to incriminate the one testifying, provided immunity be accorded, the immunity to be complete; that is to say in all respects commensurate with the protection guaranteed by the constitutional limitation."

In support of this oft-repeated proposition, the court cites:

Brown v. *Walker*, 161 U. S. 591;
Burrell v. *Montana*, 194 U. S. 572;
Jack v. *Kansas*, 199 U. S. 372;
Ballmann v. *Fagin*, 200 U. S. 186;
Hale v. *Henkel*, 201 U. S. 43;
Heike v. *United States*, 217 U. S. 423.

In the case at bar it is conceded that the petitioner when appearing before the official of the Office of Price Administration for the purpose of giving testimony pursuant to the directions of the subpoena served upon him, affirmatively claimed immunity.

It is not essential that the government should have received information with respect to all elements necessary to establish the guilt of your petitioner from the information supplied by him to the official of the Office of Price Administration. It is sufficient that the government may have, not that it should have. This had been the law since at least the time of Chief Justice John Marshall, who stated in the famous Aaron Burr trial (1 Burr's Trial, p. 244):

> "Many links frequently compose that chain of testimony which is necessary to convict any individual of a crime. It appears to the court to be the true sense of the rule that no witness is compellable to furnish any one of them against himself. It is certainly not only a possible, but a probable case, that a witness by disclosing a single fact may complete the testimony against himself, and to every effectual purpose accuse himself as entirely as he would by stating every circumstance which would be required for his conviction. That fact of itself might be unavailing, but all other facts without it would be insufficient. While that re-

mains concealed within his own bosom he is safe, but draw it from thence and he is exposed to a prosecution. The rule which declares that no man is compellable to accuse himself would most obviously be infringed by compelling a witness to disclose a fact of this description. What testimony may be possessed, or is obtainable, against any individual, the court can never know. It would seem, then, that the court ought never to compel a witness to give an answer which discloses a fact that would form a necessary and essential part of a crime which is punishable by the laws."

The majority court, speaking of the informations, in effect stated that it would have applied the above rule as appears from the following language:

"His claim (referring to petitioner) of immunity would therefore be clear except for the circumstance, now to be stated, of his waiving immunity as to part of his testimony * * * ".

(We shall discuss the question of the waiver in another place below.) The majority court however, with respect to the indictment, did not give the full effect to the above rule. They proceeded on the theory that although your petitioner testified with respect to the prices at which he sold the finished piece goods, and although price is an essential gravamen of the indictment, since, however, petitioner did not testify that he sold the finished goods at a price in excess of the maximum price established by law therefor, he gained no immunity. This is wholly overlooking the testimony given by your petitioner to the official of the Office of Price Administration both before and after the

alleged volunteered statement. From such testimony the Government was able to obtain leads which led it directly to the essential proof on the question of over-ceiling price at which the finished goods were sold. For example, your petitioner testified from whom he had purchased the textiles, and the Government, by means of this testimony, was able to trace the purchasers and from them ascertain the price paid to the Daisart Sportswear, Inc. for the finished goods.

This is apparent from an examination of Exhibits 155-158 inclusive, which were prepared by an accountant for the F.B.I. It will be recalled that your petitioner, in his testimony before the official of the Office of Price Administration, identified the firms of Steinman, Lazarus and Southeastern as firms from which he purchased priority material, and that such disclosures were the clues which led the Government directly to the purchasers. This becomes clear from the Government attorney's summation (ff. 2811-2812) in which, referring to Exhibit 158, he states:

> "Let us pause at this point to evaluate that bit of information. In order to trace this material, it was necessary not only to establish the source of the material to the various suppliers, but it was also necessary to establish to whom they had been sold or delivered eventually."

The Government using the information supplied by your petitioner relating to the source of supply, located the purchasers and ascertained that a price in excess of the ceiling price had been paid.

We now consider the so-called volunteered statement regarded by the court below as a partial waiver of your petitioner's immunity. In the "voluntary statement" (ap-

pearing in the footnote earlier), the official of the Office of Price Administration, after asking a question and obtaining an answer, followed up with another so-called question, to which the answer was "No". This so-called latter question had two sentences—(1) "This is a voluntary statement." If the answer "No" is to be applied to this first sentence, obviously it means that it is not a voluntary statement. The next sentence in the so-called latter question is (2) "You do not claim immunity with respect to that statement". If the "No" answer is to be applied to this latter sentence, then a waiver of immunity might be spelled out. As we understand the rule, however, a waiver is not to be inferred. It is only to be found to exist when it is plain, concise, clear and unequivocal.

Additionally, it should be stated that the question of waiver was raised for the first time in the brief of the Government before the Circuit Court. The record before the trial court contains no claim by the Government that there was a waiver in whole or in part by your petitioner with respect to his testimony before the official of the Office of Price Administration. In point of fact the trial court excluded the entire testimony given by your petitioner before the official of the Office of Price Administration. In referring to such testimony the trial court stated:

> "That was the statement of the examiner and I will resolve that question in favor of the defendant, George Smith, and I will exclude the entire statement as to the defendant, George Smith, including that one answer." (Referring to the testimony given by your petitioner before the Official of the Office of Price Administration, f. 2563.)

Thus, the trial court in fact ruled "that there was no voluntary statement" by your petitioner. The Govern-

ment's attorney raised no objection to this ruling, nor did he contend that your petitioner had waived the privilege claimed by him at the outset of the examination. Accordingly, we find no basis for the statement by the Majority Circuit Court that "a more reasonable approach is to apply the waiver to the extent and in accordance with the intent of the witness, as the examiner accepted it at the time".

In view of the fact that the Government's attorney did not raise the issue that the statement made by your petitioner was voluntary in whole or in part, his trial counsel was placed in the position where it was unnecessary, in fact impossible, to raise any issue as to the meaning of the question and answer which is now characterized as a "voluntary statement". Nor could your petitioner's counsel call your petitioner to testify as to his intent with respect to the claiming of or waiving of immunity. The trial court had already decided that issue in favor of your petitioner, which, we repeat, was without objection or argument by the Government's attorney.

This question, therefore, should not have been considered *de novo* by the Circuit Court.

Finally, we turn to the point raised by Judge Learned Hand in his dissenting opinion on petitioner's behalf as respects the indictment. It will be recalled that the majority opinion took the position that although the over-ceiling price was an essential gravamen in the proof of the indictment, that since your petitioner refused to incriminate himself, and instead refuted the accusation, petitioner could gain no immunity under the statute. Judge Learned Hand, in disagreement with his colleagues, and in voting for a reversal as to the indictment, indicated that since petitioner had testified as to the sale price of the finished piece goods, he testified on account of a "transaction" which related to the indictment in obedience to a subpoena, and

even though petitioner's answer refused to admit his guilt, protesting rather his innocence, he was nevertheless entitled to the immunity afforded him by the statute. We can do no better than refer this Honorable Court to the opinion written by Judge Learned Hand.

If more need be said, the statute itself is a complete answer in proof that petitioner is entitled to immunity, no matter which way his answer goes.

Implicit in the statute is that those who answer admitting guilt, as well as those who deny guilt, are entitled to immunity. In no other way can there be given effect to the provision of that portion in the statute (Compulsory Testimony Act of February 11, 1893, 49 U. S. C. A., Sec. 46) reading:

> "Provided, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying."

The net effect of the quoted portion is that immunity is to be granted nevertheless, the punishment to be visited upon the offender, however, is that he is to be punished for perjury in giving false answers.

In passing, we respectfully submit that the question involved here is an important one, which should be settled by this Court.

In the interest of economy, we have obviated the necessity of submitting a separate brief in support of the petition. We have instead preferred to combine the petition with the supporting citations of statutory and case law.

CONCLUSION

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari directed to the United States Circuit Court of Appeals for the Second Circuit, be granted to review the decision and judgment of the Circuit Court of Appeals for the Second Circuit.

Dated: September 16, 1948.

Respectfully submitted,

GEORGE SMITH,
Petitioner

By JULIAN C. TEPPER,
Attorney for Petitioner.

WALTER R. HART
and
LOUIS TIMBERG
With him on the Petition.

Certificate of Counsel

I hereby certify that in my judgment the foregoing petition is well founded and that it is not interposed for delay.

JULIAN C. TEPPER,
Attorney for Petitioner,
and a member of the Bar
of this Court.

Supreme Court of the United States

OCTOBER TERM, 1948

No. 292

GEORGE SMITH,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

REPLY BRIEF ON BEHALF OF GEORGE SMITH, PETITIONER HEREIN

JULIAN C. TEPPER
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Brooklyn 2, N. Y.

Supreme Court of the United States

OCTOBER TERM, 1948

No. .....

GEORGE SMITH,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

REPLY BRIEF ON BEHALF OF GEORGE SMITH, PETITIONER HEREIN

We feel that we have adequately and fully stated the contentions of George Smith, Petitioner herein, in his petition in support of the writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit.

We do not intend to repeat any part of the contentions raised in such petition except to direct this Honorable Court's attention to an inaccuracy appearing in the Government's brief in opposition thereto appearing at bottom of page 15 thereof and which reads as follows:

> "It should not be overlooked, moreover, that even in the absence of an immunity statute, a witness might deem it to be to his advantage to volunteer exculpatory information in order to avoid any adverse inference that might be drawn from his silence. When exculpatory information is given under the Compulsory Testimony Act, the determination whether the witness gave his testimony voluntarily is a question of fact for the court. In the instant case there was sufficient evi-

dence to support the inference of the two lower courts that Smith did not intend to claim immunity on account of his self-exonerating statement."

We do not quarrel with the Government in its asserted position, that the issues as to the alleged voluntary nature of the statement given by George Smith before the Official of the Office of Price Administration was one of fact.

The Trial Court determined without qualification that the testimony given by George Smith was in all respects involuntary and should be excluded from the evidence as against him. The assertion by the Government in its Reply Brief as earlier quoted that "there was sufficient evidence to support the inference of the *two lower courts* that Smith did not intend to claim immunity on account of his self-exoneration statement" is therefore demonstrably inexact.

In this connection, the Court stated:

> "That was the statement of the examiner and I will resolve that question in favor of the defendant, George Smith, and I will exclude the entire statement as to the defendant, George Smith, including that one answer." (Referring to the testimony given by your petitioner before the Official of the Office of Price Administration, f. 2563.)

All of the foregoing has been carefully pointed out by George Smith in his petition in support of the Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit, at pages 17 (bottom), 18, and 19, to which we again respectfully direct this Court's attention.

All of the foregoing respectfully submitted,

JULIAN C. TEPPER,
Attorney for Petitioner

Office-Supreme Court, U. S.
FEB 4 1944
CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 292

GEORGE SMITH,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

BRIEF FOR PETITIONER

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POINT I

One who, in obedience to a subpoena issued pursuant to the Compulsory Testimony Act of February 11, 1893, U. S. C. A., Title 49, Section 46, appears before an official of the Office of Price Administration, asserts his constitutional privilege and gives testimony under oath substantially touching the alleged offenses, obtains immunity from prosecution of those offenses 13

On September 23, 1947, petitioner and the said corporation were indicted for conspiracy to violate the Emergency Price Control Act of 1942 (50 U. S. C. App. 901 *et seq.*) by selling finished piece goods at prices in excess of the ceilings established by O. P. A. regulation (R. 21-26). The two informations and the indictment were consolidated for trial (R. 28-32).

Petitioner and the said corporation were found guilty on 35 counts of each of the two informations, and were found guilty on the conspiracy indictment (R. 988-990). Petitioner and the corporation were fined $710,000,00 each and petitioner was sentenced to a total of three years' imprisonment.

The Court of Appeals, reversed the conviction of the petitioner in part with respect to 12 counts on each of the two informations on the ground that he had acquired immunity as to those charges by virtue of his testimony before the official of the Office of Price Administration, but his conviction on the remaining counts of the informations and the conspiracy indictment was affirmed. The partial reversal decreased the total amount of the fines imposed upon him by $240,000.00. Judge Learned Hand dissented from the affirmance of the petitioner's conviction on the indictment on the ground that he also acquired immunity as to that charge (R. 1038-1050).

The court below predicated the affirmance of the conviction in part on the ground that the alleged "volunteered statement" given by petitioner before the official of the Office of Price Administration, appearing earlier in a footnote, operated as a partial waiver of the immunity granted to him under the Compulsory Testimony Act.

Specification of Errors to Be Urged

The Court of Appeals erred:

(1) In holding that the immunity afforded petitioner by virtue of the Compulsory Testimony Act of February 11, 1893 (U. S. C. A. Title 49, Sec. 46), did not apply to the informations and the indictment as a whole, where the proof in support of which was obtained by leads rather than by direct testimony given by petitioner in his testimony before the official of the Office of Price Administration.

(2) In its misconception of the import of the testimony of petitioner, earlier quoted here as a footnote, by construing it to be a "voluntary statement" outside of the general claim made by petitioner at the outset of the hearing before the official of the Office of Price Administration, that all testimony given by him at the hearing was to be considered under the protective privilege of the immunity statute.

(3) In holding that petitioner gained no immunity upon the indictment under the Compulsory Testimony Act of February 11, 1893 (U. S. C. A., Title 49, Sec. 46), where in response to a question put to him by the official of the Office of Price Administration relating to the selling prices at which he disposed of the finished piece goods he refused to incriminate himself and instead suggested his innocence. (We reiterate, this question is the one raised by Judge Learned Hand in his dissenting opinion.)

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POINT II

Under Point I petitioner contended that having appeared before an official of the Office of Price Administration in obedience to a subpoena served upon him in his individual capacity and having asserted his constitutional privilege with respect to the compulsory giving of testimony under oath touching both the two informations and the indictment, he thereby gained immunity from prosecution as to all of these offenses. However, since the majority judges of the Court of Appeals, as respects the indictment, held that since petitioner in his answer refused to incriminate himself as to the over-ceiling prices and instead refuted the accusation petitioner gained no immunity under the statute, petitioner under this Point contends that the majority judges in this respect were in error and that the rule that petitioner acquired immunity as to the indictment even though he did not admit his guilt, as enunciated by Judge Learned Hand in his dissenting opinion, is sound 23

POINT III

Petitioner did not by the so-called volunteered statement at the hearing conducted by the official of the Office of Price Administration, waive or surrender the immunity which he expressly claimed at the outset under the Compulsory Testimony Act 25

FINAL POINT

For the foregoing reasons, the conviction of petitioner, George Smith, should be reversed, the informations and indictment dismissed, and the petitioner, George Smith, discharged 30

APPENDIX 31

POINT I.

One who, in obedience to a subpoena issued pursuant to the Compulsory Testimony Act of February 11, 1893, U. S. C. A., Title 49, Section 46, appears before an official of the Office of Price Administration, asserts his constitutional privilege and gives testimony under oath substantially touching the alleged offenses, obtains immunity from prosecution of those offenses.

Setting aside for the moment the questions of the alleged partial waiver (which will be considered under Point III), the petitioner, beyond dispute, was entitled to immunity from prosecution of the offenses lodged by the two informations and the indictment in question.

The petitioner brought himself within the scope of the statutory authorization, because the "transaction, matter or thing," concerning which he had testified had a substantial connection with the matters involved in his prosecution. Nowhere is it suggested or pretended that petitioner did not fully comply with the subpoena in this case nor that his testimony and the information produced was excessive, or that his claim of constitutional immunity was frivolous, insubstantial or not made in good faith.

We respectfully submit that it was the examiner's duty, when the petitioner claimed his privilege at the outset, to determine whether he wished to exchange immunity for testimony. If he did not wish to do so, he should have stopped further inquiry. He elected to take the other course.

So, for example, this court, in *United States* v. *Monia*, 317 U. S. 424, 430, stated thus:

> "Congress evidently intended to afford Government officials the choice of subpoenaing a witness and putting

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him under oath, with the knowledge that he would have *complete immunity* from prosecution respecting any matters substantially connected with the transactions in respect of which he testified, or retaining the right to prosecute by foregoing the opportunity to examine him." (Italics supplied.)

A brief review of the history of the statutes governing the provisions for immunity to a natural person as co-extensive with the immunity guaranteed under the Fifth Amendment of the United States Constitution is enlightening. Government agencies found themselves obstructed in the prosecution of suits against individuals and corporations because of witnesses claiming their constitutional privilege under the Fifth Amendment. Therefore, in order to aid the Government in obtaining necessary evidence, Congress adopted the Immunity Statute of February 25, 1868 (R. S. #860) which, in brief, provided that no evidence obtained from a witness could be used against him in a criminal proceeding.

In *Counselman* v. *Hitchcock*, 142 U. S. 547, the Supreme Court declared this Immunity Statute unconstitutional because the immunity granted thereby was not co-extensive with the Fifth Amendment. The Court pointed out on page 564 that the Statute would not

"prevent the use of his testimony to search out other testimony to be used in evidence against him or his property, in a criminal proceeding in such Court. It could not prevent the obtaining and the use of witnesses and evidence which should be applicable directly to the testimony which he might give under compulsion, and on which he might be convicted, when otherwise, and if he refused to answer, he could not possibly have been convicted."

OTHER AUTHORITIES CITED:

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28 U. S. C. 1254(1)	1
Rules 37(b) F. R. Crim. P.	1
Rules 45(a) F. R. Crim. P.	1
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 292

GEORGE SMITH,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

BRIEF FOR PETITIONER

Opinions Below

The majority and dissenting opinions in the Court of Appeals are reported in 169 F. 2d 856 (R. 1038-1030). There was no opinion in the District Court for the Southern District of New York.

Jurisdiction

The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

The judgment of the Court of Appeals was entered August 23, 1948 (R. 1050). The petition for Writ of Certiorari was filed September 22, 1948. Certiorari was granted on December 6, 1948.

Questions Presented

1. Whether petitioner, George Smith, having given his testimony *viva voce* before an official of the Office of Price Administration on April 30, 1946, in obedience to a subpoena, and having seasonably asserted his constitutional privilege against self-incrimination, thereby purchased full and complete immunity under the Compulsory Testimony Act of February 11, 1893, U. S. C. A. Title 49, Section 46, concerning the transactions, matters and things, to which he testified and which the Government made the basis of the charges set out in the informations and indictment, leading to his conviction for illegal extension of preference ratings and illegal diversion of textiles so procured and conspiring to sell finished piece goods at prices in excess of the minimum established therefor.

2. Did the immunity gained by the petitioner by virtue of the Compulsory Testimony Act of February 11, 1893, U. S. C. A. Title 49, Sec. 46, apply only to the use of the actual testimony given by the petitioner at the hearing before an official of the Office of Price Administration, or did it extend to all charges, the proof of which was made dependent upon leads given by the petitioner in his testimony before the aforesaid official which resulted in his ultimate conviction.

3. May it be contended that the statement (quoted as a footnote below) given by the petitioner on the hearing before an official of the Office of Price Administration, which was found by the Court of Appeals to operate as a partial waiver of his immunity, was broad enough to justify the

decision of the Majority Court in the affirmance in part of the conviction of the petitioner.

4. May it be contended that the immunity granted to the petitioner under the Compulsory Testimony Act of February 11, 1893, U. S. C. A. Title 49, Sec. 46, is lost where he, in response to the question put to him by the official of the Office of Price Administration, refused to incriminate himself and instead refuted the accusation. (This question is the one raised by Judge Learned Hand in his dissenting opinion.)

Statutes Involved

Section 202(g) of the Emergency Price Control Act of 1942, as amended, 56 Stat. 23, 58 Stat. 632, 50 U. S. C. App. 922(g) provides:

* * * * *

(g) No person shall be excused from complying with any requirements under this section because of his

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Footnote:

"Question: So that with respect of Daisart Sportswear Inc., contracting activities on ammunition bag materials, were shipped by the manufacturer without bill?

Answer: It was not. Metals Disintegrating Company being a foreign concern and being unable to furnish this material, they asked me to purchase materials for them. They were aware that I cannot do that without proper priorities. Those priorities were forthcoming in a blanket sum. No stipulated amount and I was further told to maintain a constant stock for any orders they may call for. Their orders came to sometimes dated and never in any set size or specified form. They charged from day to day. I then went about purchasing material for their work. When and if I had a surplus, I would notify them and ask them if they had anything immediately on hand as I am overstocked, at which time they told me they had not and to dispose of it.

Question: This is a voluntary statement. You do not claim immunity with respect to that statement?

Answer: No."

privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (U. S. C., 1934, edition, title 49, sec. 46), shall apply with respect to any individual who specifically claims such privilege.

The Compulsory Testimony Act of February 11, 1893, 27 Stat. 443, 49 U. S. C. 46, provides:

> That no person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission, or in obedience to the subpoena of the Commission, whether such subpoena be signed or issued by one or more Commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the act of Congress, entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or of any Amendment thereof on the ground or for the reason that the testimony or evidence, documentary or otherwise, required to him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpoena, or the subpoena of either of them, or in any such case or proceeding: *Provided*, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

* * * * *

Nature of Informations, Indictment, and Resulting Conviction

The first information was of forty-one counts, and it in substance alleged that the petitioner and the co-defendants had unlawfully and wilfully failed to utilize textiles, received as a result of the application or extension of preference ratings, for a prescribed or permitted use. The second information, of a like number of counts, alleged that the petitioner and the co-defendants had unlawfully and wilfully applied and extended preference ratings for textiles which they were not entitled to apply or extend. Finally, the indictment charged them with conspiring to sell finished piece goods at prices in excess of the minimum established therefor.

The indictment and the two informations were consolidated for trial. All were found guilty on the indictment. On the two informations, however, certain counts were eliminated either by action of the court or upon verdict of not guilty, so that petitioner was found guilty on thirty-five counts of each. Fines aggregating $710,000 were thereupon imposed on petitioner, and in addition he was sentenced to a total of three years' imprisonment.

On appeal to the United States Circuit Court of Appeals for the Second Circuit, the majority court (the opinion being written by Judge Clark and concurred in by Judge Swan), reversed the conviction of the petitioner upon Counts 1-4, 7, 11, 14, 16, 17, 20, 24, and 30 of each information, and affirmed as to the balance. This in effect reduced the fine by the sum of $240,000, but did not affect his prison sentence.

Learned Hand, Circuit Judge, in a dissenting opinion, agreed with the majority court except as to the conviction of petitioner upon the indictment which in his opinion he stated should have been reversed.

Statement

The petitioner, on April 30, 1946, in response to a subpoena, in his individual capacity (R. 850) appeared before an official of the Office of Price Administration, accompanied by his counsel. Petitioner, after being duly sworn as a witness, and after stating his name, address, place of business and his connections with the predecessor to the Daisart Sportswear, Inc., advised the representative of the Office of Price Administration who conducted the investigation that he was claiming his right of immunity under the relevant Statute, and that such claim of amnesty would apply to all questions thereafter put to him on such examination and the answers made by him in response thereto.

On this subject the following colloquy took place:

"Mr. Turtz (official of O. P. A. conducting the inquiry): At this point, Mr. Smith stated that he thought he had a blanket privilege. Mr. Turtz stated that no privilege having been claimed up to this point no immunity would result with respect to the answers made to the questions propounded.

Mr. Smith: I want to claim privilege as to anything that I say.

Mr. Turtz: Up to this point in the record there has been no claim made by you with respect to any privilege or immunity?

Mr. Smith: Correct.

Mr. Turtz: Your counsel has stated to you that with respect to any question which you feel the answer will tend to incriminate you, you have to make the request for privilege yourself. In other words, at this point, Mr. Smith, you are making a request for privilege with respect to any question that I propound to you, except

as to those questions which I have already propounded?

Answer: That's correct" (R. 1011, 1012).

A perusal of the testimony given by petitioner before the official of the Office of Price Administration (Government's Exhibit 147-A, R. 1009), will disclose that the petitioner was plied with various questions and that the answers given by him had a telling effect in the sense that his evidence had been used to work up the case against him; in short, that he had been compelled by that testimony to supply the facts on which the Government a year later predicated the informations and indictment and later proved his guilt.

Petitioner revealed that prior to 1944 he conducted business under the assumed name of Daisart Manufacturing Company; that thereafter Daisart Sportswear, Inc., a New Jersey corporation, succeeded to the business of the Daisart Manufacturing Company; that he was the sole stockholder, officer and director of Daisart Sportswear, Inc.; that Daisart Sportswear, Inc. was engaged in the business of manufacturing, purchasing and selling of textiles and kindred products; that Daisart Sportswear, Inc. was a contractor for the Metals Disintegrating Company which was under contract to manufacture ammunition bags directly for the United States Government; that it was also a contractor for many other concerns, to wit:

Lenn Sportswear, Inc.
Mickey Finn Clothing
Kit Packing Co.
London H.C. Co.
London Vest Co.

He also revealed the names of the concerns to whom he extended said priorities, to wit;

A. Steinman & Co., 4th Avenue, New York City
L. Lazarus & Co., New York City
Southeastern Cottons

It is significant to point out that in addition to revealing the names of the above firms, the petitioner also disclosed that there were several other firms involved. The petitioner was asked the following questions by the interrogator and gave the following responses:

"Question: In connection with its manufacturing operations, Daisart Sportswear Inc., had to acquire certain materials and fabrics? Can you give me the names of the persons or firms from whom those fabrics were purchased?

"Answer: A. Steinman & Co., 4th Avenue, New York City; L. Lazarus & Co., New York City; Southeastern Cottons. *There are several others but I cannot remember them.*

"Question: *There were others?* And in connection with its purchases from the firms that you have mentioned *and with respect to those which at the moment you don't recall,* did Daisart Sportswear Inc., receive invoices from these suppliers?

"Answer: They did" (R. 1021). (Emphasis supplied.)

It is thus clear that petitioner testified that Daisart Sportswear Inc. received invoices from the named suppliers as well as other unnamed suppliers in connection with the purchase of goods.

He also testified that the payments for the purchase of material were made by corporate check drawn on the bank of Daisart Sportswear, Inc., namely Fidelity Union Trust Company, Newark, New Jersey (R. 1021).

We stress the foregoing for the reason that by the above testimony, the Government was informed not only of the named suppliers, but in addition that there were other suppliers whose names the petitioner could not identify at the moment. The Government could thus discover by an examination of the records of Daisart's bank, namely Fidelity Union Trust Company, Newark, New Jersey, which was in possession of such records, the unnamed suppliers. Thus fortified the Government was able to trace the companies which were the unnamed suppliers of the petitioner. In this manner the Government was able to set out the various counts in each of the two informations and ultimately obtain his conviction thereon.

In order to obtain a conviction under the informations it was incumbent upon the Government to establish the following facts:

A. The dealing with the Metal Disintegrating Company.

B. The use of blanket preference rating to obtain the desired commodities.

C. The companies from which the materials had been purchased.

D. The disposal of the surplus stock.

E. The companies to which it had been sold.

In order to obtain a conviction under the indictment it was incumbent upon the Government to establish the following facts:

A. That he was in possession of certain textiles.

B. That he sold textiles.

C. That the sale price was in excess of the permissible maximum price.

An examination of the Government's Exhibits 155-158 inclusive, which were prepared by an accountant emanating from the F.B.I. reveals how the Government was able to build up its case from the clues furnished by petitioner. These exhibits consist of schedules indicating, among other things, the names of the concerns from which petitioner had purchased merchandise under priority orders, and the sales made by petitioner. This is particularly so in reference to Exhibit 158, which related to separate counts of the information and the indictment, and traces the goods from petitioner's suppliers to his ultimate buyers. The buyers were traced as a result of an examination of the books of the suppliers, to wit, Steinman, Southeastern, Lazarus and others. Suffice it to say that a study of the exhibits mentioned will disclose the fact that petitioner's testimony elicited from him by the official from the Office of Price Administration, which among other things revealed that he purchased goods from Steinman, Lazarus and Southeastern, furnished the clues which led the Government directly to the purchasers.

On March 31, 1947, two informations of 41 counts each were filed against petitioner and Daisart Sportswear, Inc., charging them with the unlawful application and extension of preference ratings in the purchase of textiles and with the illegal diversion of the materials to other than certified uses, in violation of Section 301 of the Second War Powers Act (56 Stat. 177; 58 Stat. 827; 60 Stat. 868; 50 U. S. C. App. 633) (R. 15-20).

A new statute was then passed by Congress, the Act of February 11, 1893, and incorporated in the Emergency Price Control Act of 1942 (Section 202, subdivision g).

This act was declared constitutional in *Brown* v. *Walker*, 161 U. S. 591, holding that the Fifth Amendment does not deprive Congress of the power to compel the giving of testimony or the production of books and records, even though said testimony or books and records might incriminate the witness, *provided* that immunity be accorded the witness and that said immunity was complete and in all respects commensurate with the protection guaranteed by the constitutional limitation. The court stated that this immunity statute was one of general amnesty and the desired protection of the Constitution was fully accomplished.

This holding was reiterated by the Supreme Court in numerous other cases including *Glickstein* v. *United States*, 222 U. S. 139, wherein the Court stated on page 141:

> "It is undoubted that the constitutional guaranty of the Fifth Amendment does not deprive the law-making authority of the power to compel the giving of testimony, even though the testimony, when given, might serve to incriminate the one testifying, provided immunity be accorded, the immunity to be complete; that is to say in all respects commensurate with the protection guaranteed by the constitutional limitation."

In support of this oft-repeated proposition, the court cites:

> *Brown* v. *Walker*, 161 U. S. 591;
> *Burrell* v. *Montana*, 194 U. S. 572;
> *Jack* v. *Kansas*, 199 U. S. 372;
> *Ballmann* v. *Fagin*, 200 U. S. 186;

Hale v. *Henkel*, 201 U. S. 43;
Heike v. *United States*, 217 U. S. 423.

In the case at bar it is conceded that the petitioner when appearing before the official of the Office of Price Administration for the purpose of giving testimony pursuant to the directions of the subpoena served upon him, affirmatively claimed immunity.

It is not essential that the Government should have received information with respect to all elements necessary to establish the guilt of your petitioner from the information supplied by him to the official of the Office of Price Administration. It is sufficient that the Government may have, not that it should have. This had been the law since at least the time of Chief Justice John Marshall, who stated in the famous Aaron Burr trial (1 Burr's Trial, p. 244):

> "Many links frequently compose that chain of testimony which is necessary to convict any individual of a crime. It appears to the court to be the true sense of the rule that no witness is compellable to furnish any one of them against himself. It is certainly not only a possible but a probable case, that a witness by disclosing a single fact may complete the testimony against himself, and to every effectual purpose accuse himself as entirely as he would by stating every circumstance which would be required for his conviction. That fact of itself might be unavailing, but all other facts without it would be insufficient. While that remains concealed within his own bosom he is safe, but draw it from thence and he is exposed to a prosecution. The rule which declared that no man is compellable to accuse himself would most obviously be infringed by compelling a witness to disclose a fact of this description.

> What testimony may be possessed, or is obtainable, against any individual, the court can never know. It would seem, then, that the court ought never to compel a witness to give an answer which discloses a fact that would form a necessary and essential part of a crime which is punishable by the laws."

We do not mean to assert that any innocuous testimony given by a witness, such as the giving of one's name or residence, would invade his legal rights against self-incrimination. The evidence obviously must be of a more substantial nature which would go to the substance of the prosecution itself.

In *Doyle* v. *Hofstader*, 257 N. Y. 244, Judge Cardozo of the New York Court of Appeals, afterward a United States Supreme Court Justice, expresses the thought at page 493 in the following language:

> "'A witness is not required to show, in order to make his privilege available, that the testimony which he declines to give is certain to subject him to prosecution, or that it will prove the whole crime, unaided by testimony from others. It is enough, to wake the privilege into life, that there is a reasonable possibility of prosecution, and that the testimony, though falling short of proving the crime in its entirety, will prove some part or feature of it, will tend to a conviction when combined with proof of other circumstances which others may supply.'"

In his summation, the Government's attorney, for the purpose of establishing the allegations under the first information No. C-125-239, that priorities were used, quoted from the testimony of petitioner before the Office of Price

Administration. After reading petitioner's testimony that priorities were used, he informed the jury:

> "I think it is clear from this statement that with regard to any other work that Daisart was doing at the time, according to this one statement, it was doing the work as a contractor on materials furnished by others, but that insofar as work done for Metals, that material came to them by reason of purchases authorized by the priorities now in question.
>
> So that we have a more or less firm and I would say almost absolute basis which is unassailable for the assumption that the only logical and the only legal basis for the application of these priorities was the authority, such as it was, which was received by Daisart through Metals Disintegrating Company" (p. 919).

Again, in his summation, the Government's attorney, for the purpose of establishing the allegations of the second information No. C-125-240, that the petitioner failed to utilize the textiles for the purpose represented, referred to his testimony before the Office of Price Administration, and concluded by saying:

> "* * * And there again we rely upon a sworn statement made in behalf of the corporation which appears in Exhibit 147-A, page 17" (p. 935).

Still further in his summation, the Government's attorney, for the purpose of establishing the allegations of the indictment No. C-125-295, that the petitioner violated the maximum price regulations, prefaced the following remarks:

> "If there be any question about the fact that there was knowledge on the part of Daisart and all those involved in this case with regard to the limitations upon the price of sales, we have only to turn to 147-A * * *" (p. 953).

and after reading petitioner's testimony, he continued:

> "It was almost clear to a certainty that the limitation with regard to price was within the minds of the individuals here, but I say we go one step further; we are not limiting ourselves to cost" (p. 953).

Likewise, the Government's attorney must have surely believed that the testimony given by petitioner was incriminating in nature, for he used such testimony very effectively in his summation, in which he stated:

> "The only case in which he had any authority whatsoever was that relating to the work done by Metals Disintegrating Company. And at no time, at no time was there any claim made that there was any other justification for the ordering of this material except the work done for Metals Distintegrating Company.
>
> Now, certainly, there wasn't any reason which one can logically point to which would prevent Daisart or Smith from disclosing the fact that he had used it in connection with other rated work, and yet never was that explanation made. Why? The reason is apparent in that sworn testimony" (p. 933).

And in another place:

> "Q. And with respect to ammunition bags? A. Since the ammunition bags were never in a set or standard

size, the waste in most instances almost equalled the amount actually used.

I am willing to take that statement at its face value, and I say to you, double the 50,000 and you will have 100,000, and I say to you that the net result is not changed one whit (pp. 935, 936). * * *

If there be any question about the fact that there was knowledge on the part of Daisart and all those involved in this case with regard to the limitations upon the price of sales, we have only to turn to 147-A, and we find at page 13, in behalf of the corporation, the following:

Q. Can you tell me how Daisart Sportswear, Inc. arrived at its selling price with respect to the items that it sold? A. Since it was surplus, it was sold at the price billed to me plus freight and haulage and less discount allowed to me.

Q. In other words, Daisart Sportswear, Inc. sold at cost plus freight less any discounts, cash or otherwise, received by Daisart Sportswear, Inc.? A. Correct" (p. 953).

From the petitioner's testimony given before the official of the Office of Price Administration, the Government was able to obtain leads which led it directly to the essential proof on the question of over-ceiling price at which the finished goods were sold. For example, petitioner testified from whom he had purchased the textiles, and the Government, by means of this testimony, was able to trace the purchasers and from them ascertain the price paid to the Daisart Sportswear, Inc. for the finished goods.

This is apparent from an examination of Exhibits 155-158 inclusive, which were prepared by an accountant for the F.B.I. It will be recalled that petitioner; in his testi-

mony before the official of the Office of Price Administration, identified the firms of Steinman, Lazarus, Southeastern and others as firms from which he purchased priority material, and that such disclosures were the clues which led the Government directly to the purchasers. This becomes clear from the Government attorney's summation (ff. 2811-2812) in which, referring to Exhibit 158, he states:

> "Let us pause at this point to evaluate that bit of information. In order to trace this material, it was necessary not only to establish the source of the material to the various suppliers, but it was also necessary to establish to whom they had been sold or delivered eventually."

The Government using the information supplied by petitioner relating to the source of supply, located the purchasers and ascertained that a price in excess of the ceiling price had been paid.

The *nisi prius* court, to be sure, believed the evidence given by petitioner before the official of the Office of Price Administration to be incriminating. On no other basis could the court's ruling be explained in excluding this testimony against him.:

> "The Court, therefore, rules as to the defendant, George Smith, that the statement and exhibit 147-A is not admissible as against him" (R. 850).

As pointed out, the matters and things about which petitioner testified were directly connected with and formed an essential link, if not the entire chain of circumstances, relied upon for conviction. The Government recognized this verity when it stated the following in its memorandum

submitted in opposition to the Certiorari, at page 10 thereof:

> "Petitioner Smith concededly gave testimony before the O. P. A. official which substantially related to the transactions which were the subject of the indictment and the informations. If, therefore, his testimony had been compelled, he would have acquired immunity from prosecution for those offenses."

Finally, the majority court, speaking of the informations, in effect stated:

> "His claim (referring to petitioner) of immunity would therefore be clear except for the circumstance, now to be stated, of his waiving immunity as to part of his testimony * * *" (169 F. 2d 856, 860).

The testimony given by petitioner at the hearing before the official of the Office of Price Administration did not touch "remote possibilities out of the ordinary course of law" (*Heike* v. *United States*, 272 U. S. 131), but on the contrary involved proofs which were germane and relevant to the establishment of the offenses before the trial court. Such being the case, petitioner by testifying compulsorily before the official of the Office of Price Administration, gained the prescribed immunity afforded him under the Compulsory Testimony Act.

In closing, "the resort to immunity statutes seems to have proved itself a valuable and satisfactory aid in the ascertainment of facts in many cases. * * * They are entitled to the fullest faith and credit that a fair construction of their language permits. Else they become pitfalls for the unwary" (Pound, *J.*, *Matter of Doyle*, 257 N. Y. 244, 272).

POINT II

Under Point I petitioner contended that having appeared before an official of the Office of Price Administration in obedience to a subpoena served upon him in his individual capacity and having asserted his constitutional privilege with respect to the compulsory giving of testimony under oath touching both the two informations and the indictment, he thereby gained immunity from prosecution as to all of these offenses. However, since the majority judges of the Court of Appeals, as respects the indictment, held that since petitioner in his answer refused to incriminate himself as to the over-ceiling prices and instead refuted the accusation, petitioner gained no immunity under the statute, petitioner under this Point contends that the majority judges in this respect were in error and that the rule that petitioner acquired immunity as to the indictment even though he did not admit his guilt, as enunciated by Judge Learned Hand in his dissenting opinion, is sound.

It will be noted that the majority opinion took the position that although the over-ceiling price was an essential element in the proof of the indictment, that since petitioner refused to incriminate himself, and instead refuted the accusation, petitioner could gain no immunity under the statute. Judge Learned Hand, in disagreement with his colleagues, and in voting for a reversal as to the indictment, indicated that since petitioner had testified as to the sale price of the finished piece goods, he testified on account of a "transaction" which related to the indictment in obedience to a subpoena, and even though petitioner's answer refused to admit his guilt, protesting rather his inno-

cence, he was nevertheless entitled to the immunity afforded him by the statute. We can do no better than in support of this point than refer this Honorable Court to the opinion written by Judge Learned Hand. (For this Court's convenience we append Judge Hand's opinion hereto.)

If more need be said, the statute itself is a complete answer in proof that petitioner is entitled to immunity, no matter which way his answer goes.

Implicit in the statute is that those who answer admitting guilt, as well as those who deny guilt, are entitled to immunity. In no other way can there by given effect to the provision of that portion in the statute (Compulsory Testimony Act of February 11, 1893, 49 U. S. C. A., Sec. 46) reading:

> "Provided, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying."

The net effect of the quoted portion is that immunity is to be granted in any event. The punishment to be visited upon the offender, however, is that he may be prosecuted for perjury in giving false answers.

POINT III

Petitioner did not by the so-called volunteered statement at the hearing conducted by the official of the Office of Price Administration, waive or surrender the immunity which he expressly claimed at the outset under the Compulsory Testimony Act.

As already noted, petitioner, on April 30, 1946, in response to a subpoena served upon him in his individual capacity appeared before an official of the Office of Price Administration, accompanied by his counsel. Petitioner, after being duly sworn as a witness, and after stating his name, address, place of business and his connections with the predecessor to the Daisart Sportswear, Inc., advised the representative of the Office of Price Administration who conducted the investigation that he was claiming his right of immunity under the relevant Statute, and that such claim of amnesty would apply to all questions thereafter put to him on such examination and the answers made by him in response thereto.

On this subject the following colloquy took place:

> "Mr. Turtz (official of O. P. A. conducting the inquiry): At this point, Mr. Smith stated that he thought he had a blanket privilege. Mr. Turtz stated that no privilege having been claimed up to this point no immunity would result with respect to the answers made to the questions propounded.
>
> Mr. Smith: I want to claim privilege as to anything that I say.
>
> Mr. Turtz: Up to this point in the record there has been no claim made by you with respect to any privilege or immunity?

Mr. Smith: Correct.

Mr. Turtz: Your counsel has stated to you that with respect to any question which you feel the answer will tend to incriminate you, you have to make the request for privilege yourself. In other words, at this point, Mr. Smith, you are making a request for privilege with respect to any question that I propound to you, except as to those questions which I have already propounded?

Answer: That's correct" (R. 1011, 1012).

Petitioner having thus asserted his constitutional privilege against self-incrimination, was thereafter interrogated, and while it was expressly understood that such privilege was still claimed, the following question was put to petitioner:

"Question: So that with respect to Daisart Sportswear, Inc., contracting activities on ammunition bag materials (the materials), were shipped by the manufacturer without bill?"

and the following response given:

"Answer: It was not. Metals Disintegrating Company being a foreign concern and being unable to furnish this material, they asked me to purchase materials for them. They were aware that I cannot do that without proper priorities. Those priorities were forthcoming in a blanket sum. No stipulated amount and I was further told to maintain a constant stock for any orders they may call. I mean Daisart Sportswear, Inc., for any orders they may call for. Their orders came to me sometimes dated and never in any set size

or specified form. They charged (sic) from day to day. I then went about purchasing material for their work. When and if I had a surplus, I would notify them and ask them if they had anything immediately on hand as I am overstocked, at which time they told me they had not and to dispose of it."

At this juncture, while the above answer was still within the purview of petitioner's claim of privilege, the examiner made the following gratuitous statement:

"Question: This is a voluntary statement. You do not claim immunity with respect to that statement?"

To this statement, petitioner answered as follows:

"Answer: No."

It is this last answer "No" to the statement of the interrogator which the Government claims constituted a waiver of petitioner's privilege.

This statement of the interrogator may be compared to hitching a horse and a cow into the same harness. A careful reading of this so-called question, to which the answer "No" was given, indicates that it contained two statements. The first sentence in the so-called question is: "This is a voluntary statement." If the answer "No" is to be applied to this first sentence, obviously it means that it is not a voluntary statement. The next sentence in the so-called question is: "You do not claim immunity with respect to that statement." If the "No" answer is to be applied to this latter sentence, then a waiver of immunity might be spelled out. As we understand the rule, however, a waiver is not to be inferred. It is only to be found to exist when it is plain, concise, clear and unequivocal (27 R. C. L.

Sec. 6, p. 909; *G. S. Johnson* v. *Nevada Packard Mines Co.*, 272 F. 291, 305).

This much was obviously recognized by the trial judge who excluded the entire testimony given by petitioner before the official of the Office of Price Administration, by holding:

> "That was the statement of the examiner and I will resolve that question in favor of the defendant, George Smith (referring to petitioner) and I will exclude the entire statement as to the defendant, George Smith (referring to petitioner) including that one answer" (R. 854-855).

Thus, the trial court in fact ruled "that there was no voluntary statement" by petitioner. The Government's attorney raised no objection to this ruling, nor did he contend that petitioner had waived the privilege claimed by him at the outset of the examination.

Accordingly, we find no basis for the statement by the Majority Court of Appeals that "a more reasonable approach is to apply the waiver to the extent and in accordance with the intent of the witness, as the examiner accepted it at the time."

It must be emphasized that the Government is seeking to spell out a waiver by petitioner of a basic constitutional privilege. In criminal cases basic constitutional protections should not be suspended by mere inferences from indifferent or doubtful facts (*Wood* v. *United States*, 128 F. 2d 265, 277).

In fact, every reasonable intendment is indulged against the waiver of fundamental rights, and courts do not presume acquiescence in their loss (*Hodges* v. *Easton*, 106 U. S. 408; *Johnson* v. *Zerbst*, 304 U. S. 458).

In construing an amendment of nearly identical import Amendment 6 of the United States Constitution, according to an accused the assistance of counsel—this court, in *Johnson* v. *Zerbst*, 304 U. S. 458, at p. 464 said:

> "It has been pointed out that courts indulge every reasonable presumption against waiver of fundamental constitutional rights' and that we 'do not presume acquiescence in the loss of fundamental rights.' A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege."

In support thereof the court cites:

> *Aetna Ins. Co.* v. *Kennedy*, 301 U. S. 389, 393;
> *Hodges* v. *Easton*, 106 U. S. 408, 412;
> *Ohio Bell Tel. Co.* v. *Public Utilities Comm.*, 301 U. S. 292, 307.

And in construing another amendment of nearly identical import—Amendment 4 of the United States Constitution, according an individual protection against unreasonable search and seizure—the court said, in *Nueslein* v. *District of Columbia*, 115 F. 2d 690, at 695:

> "The rights of the defendant under the IVth Amendment have been infringed and he has not waived those rights. Before a court will hold that a defendant has waived his protection under this Amendment, there must be convincing evidence to that effect."

In support thereof, the court cites:

> *United States* v. *Kelih*, 272 F. 484;
> *United States* v. *Lydecker*, 275 F. 976.

To the same effect see also *Gibson v. United States*, 149 F. 2d 381, 383, certiorari denied, 326 U. S. 724.

Moreover, since the Government's attorney did not raise the issue that the statement made by petitioner was voluntary in whole or in part, his trial counsel was placed in the position where it was unnecessary, in fact impossible, to raise any issue as to the meaning of the question and answer which is now characterized as a "voluntary statement". Nor could petitioner's counsel call petitioner to testify as to his intent with respect to the claiming of or waiving of immunity. The trial court had already decided that issue in favor of petitioner, which, we repeat, was without objection or argument by the Government's attorney.

This question, therefore, should not have been considered *de novo* by the Court of Appeals.

In conclusion, what the court said in *McCrea v. Jackson*, 148 F. 2d 193, at page 197, seems apposite here: " * * * The voluntary waiver of a constitutional right, where a man's personal liberty is concerned is not to be lightly assumed."

FINAL POINT

For the foregoing reasons, the conviction of petitioner, George Smith, should be reversed, the informations and indictment dismissed, and the petitioner, George Smith, discharged.

Respectfully submitted,

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Attorney for George Smith, Petitioner.

WALTER R. HART,
LOUIS TIMBERG,
RUBIN MAZEL,
On the Brief.

APPENDIX

L. HAND, *Circuit Judge* (dissenting in part):

I agree with my brothers except as to the conviction of Smith upon the indictment, which I think ought also to be reversed. The language of the act* is that no one shall be prosecuted "on account of any transaction * * * concerning which he may testify * * * in obedience to * * * subpoena." There can be no debate that Smith was questioned and testified "concerning" the prices at which the company sold; and, as the indictment was for conspiring to sell at higher prices than the regulations allowed, his testimony inevitably "concerned" the "transactions" charged in the indictment. On the other hand, not only did his answers not support the charge, but they at least tended to refute it: I shall assume that they did refute it. Laying aside the "waiver" for the moment, we should have to hold, in order to affirm the conviction, that, when it has been ascertained that a witness's answers to questions "concerning" a "transaction," which may or may not be criminal, will not incriminate him—*a fortiori* when they exculpate him—he must answer. It is true that this is in accord with the following passage in Wigmore,** although he was only giving the reasons why such statutes do not give immunity to a witness who answers falsely: "The privilege, by hypothesis would have been violated only if the witness had truly confessed his crime, but if he denies it and falsely exonerates himself, he has confessed no fact 'against himself' " and "his privi-

---

* §46, Title 49, U. S. C.

** Wigmore on Evidence, §2282(c).

lege has not been infringed by the actual answer." Apparently there are no decisions supporting this statement, and I cannot agree with it. The privilege, if it is to exist at all, must include all questions which are relevant to the witness's guilt, regardless of how he will answer them. Were it otherwise, the privilege itself would be conditional upon the answers, and the witness, in order to assert it, would be obliged to disclose whether he would deny or admit any guilt. It is precisely to protect him from that predicament that the privilege exists; indeed, the result would be to compel him, if he was in fact guilty, either to confess his guilt, or to add perjury to it.

I do not understand that we are committing ourselves to this position; on the contrary we are expressly refusing to do so; but this we do only because we hold that the "volunteered statement" included the "transactions" defined as crimes in the indictment. In doing so are we not giving to the only relevant passage in the "statement" a wider scope than is justified? All that it contained, touching the charge in the indictment, is the following passage: "When and if I had a surplus, I would notify them and ask them if they had anything immediately on hand as I am overstocked, at which time they told me they had not and to dispose of it." That did indeed allow the use of any of Smith's earlier or later testimony to the same effect, but as a "waiver" it went no further. The "statement" said nothing "concerning" the prices at which the "surplus" was sold, and Smith had already been questioned about those and had answered. I

quote his testimony in the margin.* It seems to me that he did not "waive" his immunity by "volunteering" that all he sold was "surplus"; for a "waiver" must extend to all the essentials of the charge from whose prosecution the act gives him immunity. The sales price was the very kernel of that charge.

---

* "Question: But you do state the fact to be that sales of materials and fabrics were made by Daisart Sportswear Inc.?

"Answer: Correct.

"Question: Can you tell me how Daisart Sportswear Inc., arrived at its selling price with respect to the items that it sold?

"Answer: Since it was surplus, it was sold at the price billed to me plus freight and haulage and less discount allowed to me.

"Question: In other words, Daisart Sportswear Inc., sold at cost plus freight less any discounts, cash or otherwise, received by Daisart Sportswear Inc.?

"Answer: Correct.

"Question: For the year 1945, what was the dollar volume of sales of fabrics and materials made by Daisart Sportswear Inc.?

"Answer: I have no knowledge of that. Without records I cannot tell.

"Question: Are there such records available?

"Answer: There are not to my knowledge.

"Question: Can you tell the names of the persons or companies who purchased fabrics or piece goods or materials from Daisart Sportswear Inc.?

"Answer: Off hand I don't know. Not without consulting records.

"Question: You don't remember the names?

"Answer: Not off hand. I could name some, but I would rather not answer."

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Nos. 292 and 294

In the Supreme Court of the United States

OCTOBER TERM, 1948

GEORGE SMITH, PETITIONER

v.

UNITED STATES OF AMERICA

ALBERT J. DILLS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The majority and dissenting opinions (R. 1038-1050) in the court of appeals have not yet been reported.

JURISDICTION

The judgment of the court of appeals was entered August 23, 1948 (R. 1050). The petitions for writs of certiorari were filed September 22, 1948. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether petitioner Smith's voluntary offer of testimony before an O.P.A. official constituted a waiver of immunity from prosecution for the offenses of which he stands convicted.

2. Whether petitioner Deeb has standing to complain of the denial of petitioner Smith's claim of immunity.

STATUTES INVOLVED

Section 202 of the Emergency Price Control Act of 1942, as amended, 56 Stat. 23, 58 Stat. 632, 50 U.S.C. App. 922, provides:

> (a) The Administrator is authorized to make such studies and investigations, to conduct such hearings, and to obtain such information as he deems necessary or proper to assist him in prescribing any regulation or order under this Act, or in the administration and enforcement of this Act and regulations, orders, and price schedules thereunder.
>
> (b) The Administrator is further authorized, by regulation or order, to require any person who is engaged in the business of dealing with any commodity, or who rents or offers for rent or acts as broker or agent for the rental of any housing accommodations,

to furnish any such information under oath or affirmation or otherwise, to make and keep records and other documents, and to make reports, and he may require any such person to permit the inspection and copying of records and other documents, the inspection of inventories, and the inspection of defense-area housing accommodations. The Administrator may administer oaths and affirmations and may, whenever necessary, by subpena require any such person to appear and testify or to appear and produce documents, or both, at any designated place.

(c) For the purpose of obtaining any information under subsection (a), the Administrator may by subpena require any other person to appear and testify or to appear and produce documents, or both, at any designated place.

* * *

(g) No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (U.S.C., 1934 edition, title 49, sec. 46), shall apply with respect to any individual who specifically claims such privilege.

The Compulsory Testimony Act of February 11, 1893, 27 Stat. 443, 49 U.S.C. 46, provides:

That no person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission, or in obedience to the subpoena of the Commission, whether such subpoena be signed or issued by one or more Commissioners, or in any cause or proceeding, criminal

or otherwise, based upon or growing out of any alleged violation of the act of Congress, entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or of any Amendment thereof on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpoena, or the subpoena of either of them, or in any such case or proceeding: *Provided,* That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, contracts, agreements and documents, if in his power to do so, in obedience to the subpoena or lawful requirement of the Commission shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by fine not less than $100 nor more than $5,000, or by imprisonment for not more than one year or by both such fine and imprisonment.

STATEMENT

On March 31, 1947, two informations of 41 counts each were filed against petitioners Smith and Deeb and Daisart Sportswear Inc. charging them with the unlawful application and extension of preference ratings in the purchase of textiles

and with the illegal diversion of the materials to other than certified uses, in violation of Section 301 of the Second War Powers Act (56 Stat. 177; 58 Stat. 827; 60 Stat. 868; 50 U.S.C. App. 633) (R. 15-20). On September 23, 1947, petitioners and the corporation were indicted for conspiracy to violate the Emergency Price Control Act of 1942 (50 U.S.C. App. 901 et seq.) by selling finished piece goods at prices in excess of the ceilings established by O.P.A. regulation (R. 21-26). The two informations and the indictment were consolidated for trial (R. 28-32). So far as material to the issue presented in the petitions for certiorari, the evidence may be summarized as follows:

Smith was the sole owner of Daisart Sportswear Inc. (R. 1014) and Deeb was a salesman for the company (R. 375). During 1944 and 1945, petitioners and the corporation obtained textiles by the use of certain priority ratings, originally granted by the War Production Board to Metals Disintegrating Company (e.g., R. 237, 376, 377, 733). Petitioners certified that the materials were to be used for the manufacture of ammunition powder bags for the Army and, by using the applicable top priorities, they acquired about two and one-half million yards of textiles (R. 734). They used only forty-nine thousand yards for the certified purpose (R. 721) and sold the balance to civilian handkerchief, dress, negligee and rain-

coat manufacturers at prices in excess of established O.P.A. ceilings (e.g. R. 82, 418, 432-433, 459, 743-744).

In carrying out these activities, petitioners and the corporation failed to keep records (R. 384, 393) and engaged in transactions under fictitious names (R. 631, 612, 630, 668). They invoiced goods at fictitious prices (R. 215, 425, 459, 500) and under false descriptions (R. 471). Neither defendant took the stand.

Testimony relative to these transactions had been given before an O.P.A. official by petitioner Smith on April 30, 1946, and a transcript of his testimony was received in evidence as against the corporation (R. 655-656, 849-850, 857, 983; 1009-1030). The circumstances under which this testimony was given are undisputed (R. 1009-1030). Smith had appeared with counsel in response to two subpoenas which had been served upon him—one in his individual capacity and the other as an officer of Daisart Sportswear Inc. The subpoenas called for the production of all books, records and documents of himself or the corporation pertaining to the purchase, manufacture and sale of materials and fabrics from January 1, 1945, to the day of the examination (see R. 1012, 1013). After Smith was sworn, the O.P.A. examiner advised him that in accordance with constitutional guarantees he could not be compelled to make any self-incriminating statements. (R.

1010). After answering a few preliminary questions, Smith asserted a claim of "privilege as to anything that I say" (R. 1011). He explained his failure to produce any of the records called for by the subpoenas on the ground that they had been either destroyed, lost or misplaced (R. 1012-1013). He testified that he was the sole stockholder, officer and director of Daisart Sportswear Inc. which, prior to October 1945, had been engaged in the manufacture, purchase and sale of textiles and allied products (R. 1015). He also testified that as part of its operations Daisart was a contractor for several manufacturers, including Metals Disintegrating Company, which, in turn, was under contract to mapufacture ammunition bags directly for the United States Government (R. 1018). Smith denied that Daisart had ever purchased materials and fabrics for the sole purpose of reselling them (R. 1019). He gave the names of three of the concerns from which Daisart had purchased materials in connection with its manufacturing operations. He also gave the name of the bank upon which checks were drawn in paying for the purchases. (R. 1021.)

Smith testified further before the O.P.A. examiner that it was customary for the manufacturers to supply the materials upon which the work was performed by Daisart; if surplus or waste resulted, it was tacitly understood that Daisart could sell it for its own account (R. 1025).

In response to a question concerning the company's method of computing the prices of materials which it sold, Smith testified that "since it was surplus, it was sold at the price billed to me plus freight and haulage and less discount allowed to me" (R. 1019). In a subsequent portion of his testimony, the following occurred (R. 1026-1027):

> Question: So that with respect to Daisart Sportswear Inc., contracting activities on ammunition bag materials, [the materials] were shipped by the manufacturer without bill?
>
> Answer: It was not. Metals Disintegrating Company being a foreign concern and being unable to furnish this material, they asked me to purchase materials for them. They were aware that I cannot do that without proper priorities. Those priorities were forthcoming in a blanket sum. No stipulated amount and I was further told to maintain a constant stock for any orders they may call. I mean Daisart Sportswear Inc., for any orders they may call for. Their orders came to me sometimes dated and never in any set size or specified form. They charged [*sic*] from day to day. I then went about purchasing material for their work. When and if I had a surplus, I would notify them and ask them if they had anything immediately on hand as I am overstocked, at which time they told me they had not and to dispose of it.
>
> Question: This is a voluntary statement. You do not claim immunity with respect to that statement?
>
> Answer: No.
>
> Question: I assume that anything you tell us, Mr. Smith, is subject to verification? You state that after a time Metals Disintegrating Company, although it had a contract with

the government, was not in a position to furnish you with the materials necessary for Daisart to manufacture this item?

Answer: Right.

Question: And that because of that situation, Daisart was required to obtain priorities so that Daisart could obtain the materials and that it did so?

Answer: In a blanket amount.

Question: And that pursuant to that priority, Daisart thereafter acquired materials, some of which were used in the manufacture of ammunition bags for Metals, and some of it was disposed of by Daisart, is that correct?

Answer: Yes.

Question: And those disposals by Daisart formed a good part of the sales of fabrics made by Daisart?

Answer: They did.

Petitioner Smith and the corporation were found guilty on 35 counts and petitioner Deeb on five counts of each of the two informations. The three defendants were found guilty on the conspiracy indictment. (R. 988-990.) Petitioner Smith and the corporation were fined $710,000 each and Smith was sentenced to a total of three years' imprisonment. Deeb was fined $20,000 and sentenced to imprisonment for a year and a day. (R. 1, 6, 11, 1001-1004.) The court of appeals affirmed the convictions of Deeb and the company in their entirety. Smith's convictions on 12 counts of each of the two informations were reversed on the ground that he had acquired immunity as to those charges by virtue of his testimony before

the O.P.A. examiner, but his convictions on the remaining counts of the informations and the conspiracy indictment were affirmed. The partial reversal decreased the total amount of the fines imposed upon him by $240,000. One judge dissented from the affirmance of Smith's conviction on the indictment on the ground that he had also acquired immunity as to that charge. (R. 1038-1050.)

ARGUMENT

In the absence of a grant of immunity, a witness summoned before an administrative official is entitled to rely upon the protection afforded by the Fifth Amendment and to refuse to give self-incriminating testimony. The immunity conferred upon a witness by the Compulsory Testimony Act, which was incorporated by reference in the Emergency Price Control Act of 1942, is coterminous with the protection against self-incrimination guaranteed by the Fifth Amendment. *Shapiro* v. *United States*, 335 U.S. 1, 19-20; *Heike* v. *United States*, 227 U.S. 131. Petitioner Smith concededly gave testimony before the O.P.A. official which substantially related to the transactions which were the subject of the indictment and the informations. If, therefore, his testimony had been compelled, he would have acquired immunity from prosecution for those offenses.

The exemption from the duty freely to give testimony in aid of the investigative process, however, is one which the witness may waive by volun-

teering his testimony. *United States* v. *Monia*, 317 U.S. 424, 427; *Raffel* v. *United States*, 271 U.S. 494. The safeguards against self-incrimination are for the benefit of those who do not wish to become witnesses in their own behalf, not for those who do. Congress gave the O.P.A. power to cover the guilty with the cloak of immunity only when it was essential in order to ascertain material facts. Here, such testimony as substantially related to the convictions which this Court is asked to review was offered without compulsion. It is clear that Smith deliberately, in the presence of his counsel, volunteered the information on account of which he now claims immunity.

Smith was charged in two informations with unlawfully applying and extending priority ratings and unlawfully diverting materials so procured to other than certified uses. In his appearance before the O.P.A. examiner, he expressly volunteered the decisive disclosure of his dealings with the Metals Disintegrating Company, the use of blanket preference ratings to purchase materials, and the disposal of the surplus stock (*supra*, pp. 8-9). Except for this volunteered testimony, the only statement of Smith which bore any substantial relation to the offenses charged in the informations was the designation by him of three of the several concerns from which he and Daisart Sportswear had purchased textiles (R. 1021). The court of appeals allowed him the

benefit of the immunity statute as to all counts which were based on transactions with those three companies and, accordingly, reversed his conviction as to 12 counts of each of the informations. Although the disclosure of the names of the three selling concerns might well have been considered merely a detail of the general information which Smith voluntarily disclosed and thus have been deemed within the waiver of immunity, the Government has not sought review of the court of appeals' action in respect of those 24 counts.

The indictment charged Smith with participation in a conspiracy to violate the Emergency Price Control Act of 1942 and the applicable regulations by selling finished piece goods at prices in excess of the ceilings established by law. In his volunteered statement, Smith disclosed to the O.P.A. examiner that Metals Disintegrating Company had told him to dispose of all surplus materials which he had acquired by use of the blanket priority ratings and that such disposals formed a large part of Daisart's sales of fabrics (*supra*, p. 9). Earlier in the testimony before the O.P.A. examiner, Smith had stated that the surplusage which had been disposed of by sale had been "sold at the price billed to me plus freight and haulage and less discount allowed to me" (R. 1019). The court of appeals was of the opinion that Smith had not intended to claim immunity on account of this exculpatory statement since

substantially the same information was embraced within the tenor of the volunteered statement. As the court observed, the fact that in his volunteered statement Smith did not "repeat the OPA formula (which was of course no news or no new lead to the examiner) should not now procure him an immunity which, as it seems clear to us, he did not intend at the time to claim" (R. 1046). Actually, the information as to ceiling prices was innocuous, was not even suspicious and could not have been of aid in any prosecution. The dissenting judge thought that the information concerning the prices charged by Smith was separate and distinct from the volunteered testimony and was of the opinion that, despite its exculpatory character, it should have gained for him an immunity from prosecution for the conspiracy charged in the indictment.

Smith's contention (Pet. 13) that the court of appeals "erroneously misconceived the purpose of the immunity statute" is unwarranted. The burden of proof was upon Smith to establish his claim of immunity, which is an affirmative plea of confession and avoidance. Both the district court and the court of appeals, in denying his claim under the immunity statute, applied the principles laid down by this Court in *Brown* v. *Walker*, 161 U.S. 591; and *Heike* v. *United States*, *supra*, that a witness is entitled to immunity if disclosures which he is compelled to make substan-

tially relate to transactions upon which criminal charges are predicated. Any challenge to the decision below must be directed, therefore, to the correctness of the finding that Smith's voluntary statement was broad enough to cover the transactions upon which the informations and indictment were based and thus left no room for a claim that he acquired immunity in exchange for any compelled disclosures which he had made.

Petitioner Smith erroneously construes the majority opinion of the court of appeals as holding that testimony which is self-exonerating, as distinguished from self-incriminating, affords no basis for a claim of immunity under the Compulsory Testimony Act (Pet. 19). It was unnecessary, however, to reach that question, since the court found in the light of the volunteered testimony that Smith had not intended to claim immunity on account of his self-exonerating statement. This was the basis of the decision below, and the majority's observation concerning the effect of exculpatory testimony (R. 1046) is plainly *obiter dictum*. See also the dissenting opinion, R. 1048-1050. Hence, irrespective of whether immunity should be deemed to flow from a self-exonerating statement under other circumstances, it should not be extended in this instance since the statement was not given under compulsion.

Although this question is not involved here, it has been said that a witness who falsely exonerates

himself has by hypothesis not incriminated himself and, therefore, does not acquire immunity. "His privilege has not been infringed by the actual answer, even though it might have been by some other answer." 8 Wigmore, *Evidence* (3rd ed. 1940), § 2282, p. 504. The argument to the contrary is this: since the immunity statute was intended to be an exchange for the privilege guaranteed by the Fifth Amendment and since, under that constitutional guarantee, the witness could maintain silence when an answer might tend to incriminate him, the surrender of his right to remain silent is an adequate *quid pro quo* for immunity (see dissenting opinion below, R. 1048). However, in *Brown* v. *Walker, supra,* where it was argued that the immunity statute was not a full substitute for the constitutional protection because a witness who is prosecuted despite his disclosures is put to the expense and inconvenience of pleading immunity by way of confession and avoidance, this Court held that even though the witness might have preferred silence, the statutory immunity fully compensates for the withdrawal of the constitutional privilege.

It should not be overlooked, moreover, that even in the absence of an immunity statute, a witness might deem it to be to his advantage to volunteer exculpatory information in order to avoid any adverse inference that might be drawn from his silence. When exculpatory information is given

under the Compulsory Testimony Act, the determination whether the witness gave his testimony voluntarily is a question of fact for the court. In the instant case there was sufficient evidence to support the inference of the two lower courts that Smith did not intend to claim immunity on account of his self-exonerating statement.

Petitioner Smith also contends (Pet. 17) that his disclosure of the names of three companies from which Daisart had purchased materials gave the Government "leads which led it directly to the essential proof on the question of over-ceiling price at which the finished goods were sold." Putting aside the counts in the informations which related to those three concerns (which counts are not before this Court since the convictions based upon them were reversed), the disclosed names did not lead and could not have led to the discovery of the other crimes charged in the informations and the indictment. In the first place, the counts in the informations related to *separate and distinct transactions* with various designated firms from which Daisart purchased materials. Secondly, the indictment involved a conspiracy to *sell* materials at over-ceiling prices. (R. 21-26.) It is difficult to see how the disclosure of the names of some of Daisart's sources of supply could be deemed to bear a substantial relation to other sources of supply or to sales by Daisart. The conviction of conspiracy was amply supported by evidence which

had no substantial connection with any of the testimony for which Smith could properly claim immunity.

2. The privilege against self-incrimination is personal to the witness and, therefore, the immunity issue affects only petitioner Smith. Petitioner Deeb claims, however, that he might not have been convicted if Smith had been granted complete immunity, thus leaving Deeb to be tried alone, (Pet. 4-5). But even if Smith had been granted immunity, the corporation would have remained as a codefendant, and the identical evidence would have been presented. Moreover, no claim is made that the evidence which was admitted against Deeb was insufficient to support his conviction.

Petitioner Deeb also objects (Pet. 3-4) to a portion of the prosecutor's summation in which it was implied that Smith's testimony before the O.P.A. examiner showed knowledge on the part of the individual defendants of the applicable ceiling prices (R. 953). There was no objection by counsel for petitioner at the time this allusion to Smith's testimony was made by the prosecutor. Moreover, the latter had previously made it clear that Smith's testimony before the examiner was binding only upon the corporation (R. 916). In any event, any error in this regard was cured by the specific and careful charge of the trial court that Smith's testimony before the examiner was not to be considered by the jury in any way

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in determining the guilt or innocence of Smith or Deeb (R. 983).

CONCLUSION

The petitions for writs of certiorari present no questions warranting further review by this Court. We respectfully submit that the petitions should be denied.

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No. 292

In the Supreme Court of the United States

OCTOBER TERM, 1948

GEORGE SMITH, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The majority and dissenting opinions (R. 1038–1050) in the Court of Appeals are reported at 169 F. 2d 856.

JURISDICTION

The judgment of the Court of Appeals was entered August 23, 1948 (R. 1050). The petition for a writ of certiorari was filed September 22, 1948, and was granted December 6, 1948 (R. 1051). The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether that part of petitioner's testimony before an OPA official which substantially concerned the offenses of which he stands convicted was voluntarily given in waiver of immunity from prosecution for those offenses.

2. Whether petitioner acquired immunity on the basis of testimony which was not self-incriminating but was falsely exculpatory.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The Fifth Amendment to the Constitution provides in pertinent part:

> No person * * * shall be compelled in any criminal case to be a witness against himself, * * *.

Section 202 of the Emergency Price Control Act of 1942, as amended, 56 Stat. 23, 58 Stat. 632, 50 U. S. C. App. 922, provided:

> (a) The Administrator is authorized to make such studies and investigations, to conduct such hearings, and to obtain such information as he deems necessary or proper to assist him in prescribing any regulation or order under this Act, or in the administration and enforcement of this Act and regulations, orders, and price schedules thereunder.
>
> (b) The Administrator is further authorized, by regulation or order, to require any person who is engaged in the business of dealing with any commodity, or who

rents or offers for rent or acts as broker or agent for the rental of any housing accommodations, to furnish any such information under oath or affirmation or otherwise, to make and keep records and other documents, and to make reports, and he may require any such person to permit the inspection and copying of records and other documents, the inspection of inventories, and the inspection of defense-area housing accommodations. The Administrator may administer oaths and affirmations and may, whenever necessary, by subpena require any such person to appear and testify or to appear and produce documents, or both, at any designated place.

(c) For the purpose of obtaining any information under subsection (a), the Administrator may by subpena require any other person to appear and testify or to appear and produce documents, or both, at any designated place.

* * * * *

(g) No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (U. S. C., 1934 edition, title 49, sec. 46), shall apply with respect to any individual who specifically claims such privilege.

The Compulsory Testimony Act of February 11, 1893, 27 Stat. 443, 49 U. S. C. 46, provides:

That no person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission, or in obedience to the subpoena of the Commission, whether such subpoena be signed or issued by one or more Commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the act of Congress, entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or of any Amendment thereof on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpoena, or the subpoena of either of them, or in any such case or proceeding: *Provided*, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, contracts, agreements and

documents, if in his power to do so, in obedience to the subpoena or lawful requirement of the Commission shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by fine not less than $100 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

STATEMENT

On March 31, 1947, two informations of 41 counts each were filed against petitioner and Daisart Sportswear, Inc., and one Deeb charging them with the misuse of priorities established under section 301 of the Second War Powers Act (56 Stat. 177; 58 Stat. 827; 60 Stat. 868; 50 U. S. C. App. 633) by unlawfully applying and extending preference ratings on the purchase of specified quantities of cotton and rayon textiles and by illegally diverting those materials to other than certified uses (R. 15–20). On September 23, 1947, petitioner, the corporation and Deeb were indicted for conspiracy to violate the Emergency Price Control Act of 1942 (50 U. S. C. App. 901 et seq.) and the regulations promulgated thereunder by selling finished piece goods at prices in excess of the established OPA ceilings, by issuing false invoices, and by failing to keep accurate records (R. 21–26). The two informations and the indictment were consolidated for trial (R. 28–32).

The evidence in support of these charges may be summarized as follows:

In 1944 and 1945, Daisart Sportswear, Inc., which was wholly owned and controlled by petitioner (R. 1014), had an arrangement with Metals Disintegrating Corporation whereby it supplied Metals with bags for use in filtering and packing ammunition in connection with the latter's performance of Army and Navy contracts (R. 39–45, 51, 57–58, 111.) Metals, as it was authorized to do under its Government contracts, furnished Daisart with high blanket preference ratings to enable the latter to obtain materials to be made into the ammunition bags, with the understanding that Daisart would apply and extend the ratings to suppliers of the materials (R. 52, 55–56, 385, 397–398). During this period, Daisart sold Metals 11,987 bags which comprised about 48,920 yards of material and for which Metals paid Daisart $7,959.71 (R. 721–722). In contrast with the relatively small amount of material utilized for the permitted purpose, which was the only one for which Daisart had any right to extend priorities (R. 385–397), petitioner issued to suppliers rated orders (in which he certified that Daisart had the right to use high priorities) for 4,157,275 yards of textiles, 3,086,500 yards of which were actually invoiced to and paid for by Daisart (R. 733). As to 3,732,000 yards of the textiles so ordered, petitioner certified specifically that the end use contemplated was the making of ammunition

bags. Of this latter amount, 2,642,697 yards of material, or approximately 54 times the amount actually used for that purpose, were invoiced to and paid for by Daisart (R. 734). Only 192 ammunition bags, less than two percent of the total, were purchased by Metals from Daisart after December 1944 (R. 721–722), whereas Daisart ordered more than 3,000,000 yards of textiles after that date (see R. 932).

The material of which these ammunition bags were made was a grayish-white canvas or duck, similar to the material used for tents (R. 115–116), whereas the materials which were obtained by Daisart through the use of the high priority ratings consisted of a variety of colors and finishes, including nainsook, rayons, combed cotton, twill, etc. (R. 239, 266, 309–310, 324). Much of the materials so obtained was resold by petitioner in the original crates, often within days of their receipt from the suppliers and sometimes even in anticipation of their delivery (R. 511). As contrasted with the $7,959 worth of bags sold to Metals (R. 722), petitioner's dealings with other purchasers of the materials involved charges of $1,194,694.63 (R. 723).

The materials were diverted to various civilian handkerchief, dress, negligee and raincoat manufacturers at prices in excess of established OPA ceilings (e. g. R. 82, 229, 418, 432–433, 459, 743–744). The moneys in payment of these goods

found their way through various devices into petitioner's or Daisart's bank accounts (R. 207, 227, 437, 505). In these dealings, petitioner and the corporation failed to keep records (R. 384, 393), sold goods without invoices (R. 193), engaged in transactions under fictitious names (R. 612, 630–631, 668), and invoiced goods at fictitious prices (R. 215, 425, 459, 500) and under false descriptions (R. 471).

Two investigators of the War Production Board visited Daisart's premises in August 1945,[1] to examine the books of account of the corporation (R. 381, 391). Petitioner and his accountant represented to them that the only records available were a check book, cancelled check vouchers, some creditors' invoices, and sales records covering the period from January 1, 1944, to August 24, 1945, with the exception of a four-months' period in 1944 (R. 393, 396, 399). These records were shown to the investigators and petitioner admitted to them that he was connected with the corporation and that it did contract work for various firms and for the Government (R. 383). He stated that work was done on the basis of priorities and he gave the investigators the numbers of the priorities he was using (R. 383). One of the investigators testified as follows (R. 397–398):

> Q. Now, did you have some talk about priorities?

[1] The last application of priority ratings charged in the information occurred on July 18, 1945 (R. 17, 20).

A. Yes.

Q. With whom did you have it and what was said?

A. With Mr. Smith and I asked whether what priority he had, and he told me that the purchase of the goods was predicated upon a blanket order which Daisart received from the Metals Disintegrating Company to purchase all the piece-goods needed to manufacture powder filter bags. Mr. Smith also stated that he was advised by Metals Disintegrating Company that they were unable to obtain the necessary material for the powder bags and therefore had given Daisart the blanket order as mentioned heretofore.

Some of the creditors' invoices which the investigators examined bore the imprint of a stamp containing the priority number Daisart had used in ordering the particular goods. The invoices and the cancelled checks of Daisart, moreover, disclosed the names of the suppliers of the textiles. (R. 384–385, 394.) The check book and the cancelled checks showed that Daisart had accounts in two banks, including the Fidelity Union Trust Company, Newark, New Jersey (R. 394, 412). Cancelled checks in the amount of $281,000, which were shown to the investigators by petitioner, represented payments for part of the materials purchased by Daisart in 1945 (R. 397). Petitioner denied to the investigators that any goods were sold (R. 386) and stated that all

the material represented by the checks, except that still on hand, had been processed into manufactured items (R. 397).

On April 30, 1946, petitioner testified before an OPA official under circumstances which are undisputed (R. 1009, 1030). Petitioner had appeared with counsel in response to two subpoenas which had been served upon him—one in his individual capacity and the other as an officer of Daisart. The subpoenas called for the production of all books, records, and documents of petitioner and the corporation pertaining to the purchase, manufacture, and sale of materials and fabrics from January 1, 1945, to the day of the examination (see R. 1012, 1013). After petitioner was sworn, the OPA examiner advised him that in accordance with constitutional guarantees he could not be compelled to make any self-incriminating statements (R. 1010). After answering a few preliminary questions, petitioner asserted a claim of "privilege as to anything that I say" (R. 1011). He explained his failure to produce any of the records called for by the subpoenas on the ground that they had been either destroyed, lost, or misplaced (R. 1012–1013). He testified that he was the sole stockholder, officer, and director of Daisart Sportswear, Inc., which, prior to October 1945, had been engaged in the manufacture, purchase, and sale of textiles and allied products (R. 1015).

orities in a blanket sum and Daisart used the priorities to procure materials so as to maintain a constant stock to fill orders from Metals. If the materials on hand were excessive for that purpose they were sold (R. 1026–1027).

(b) Daisart computed its selling prices for such surpluses at cost plus freight and less discounts (R. 1019).

(c) Petitioner was the sole stockholder, officer and director of Daisart, which was engaged in the business of manufacturing, purchasing and selling textiles and kindred products (R. 1014–1015).

(d) Daisart was a contractor for many manufacturers of wearing apparel (R. 1018).

(e) In addition to the three named suppliers from whom petitioner purchased materials (for which he obtained immunity covering 12 counts of each of the informations) there were "several others but I cannot remember them" (R. 1021).

(f) Petitioner paid for materials by checks drawn on an account at the Fidelity Union Trust Company, Newark, New Jersey (R. 1021).

"When the statute speaks of testimony concerning a matter it means concerning it in a substantial way, just as the constitutional protection is confined to real danger and does not extend to remote possibilities out of the ordinary course of law." Holmes, J., in *Heike* v. *United States*, 227 U. S. 131, 144. Cf. *Cumarota* v. *United States*, 111 F. 2d 243 (C. A. 3), certiorari denied, 311 U. S. 651; 8 Wigmore, *Evidence* (3d ed. 1940) § 2261, p. 358.

He also testified that as part of its operations, Daisart made wearing apparel as a contractor for several manufacturers, specifically naming five of them, and made ammunition bags as a subcontractor for Metals Disintegrating Company, which had a prime contract with the United States Government (R. 1018). He denied that Daisart had ever purchased materials for the sole purpose of reselling them and stated that Daisart had sold only those materials which were surplus resulting from its operations in making clothing and ammunition bags (R. 1017–1018). Petitioner stated that these sales took place "from about April or May of 1945" (R. 1021). In response to a question concerning the company's method of computing the prices of materials which it sold, petitioner testified that "Since it was surplus, it was sold at the price billed to me plus freight and haulage and less discount allowed to me" (R. 1019). He gave the names of three of the concerns from which Daisart had purchased materials in connection with its manufacturing operations and said there were several others which he could not remember (R. 1021). He testified also that Daisart had received invoices from the suppliers. He further stated that the corporation had an account at the Fidelity Union and Trust Company, Newark, New Jersey, and that payment for purchases of materials were always made by check (R. 1021).

In construing the correlative privilege against self-incrimination which, as we have seen, measures the claim of immunity, Taft, J., stated in *Ex parte Irvine,* 74 Fed. 954, 960:

> * * * It is impossible to conceive of a question which might not elicit a fact useful as a link in proving some supposable crime against a witness. The mere statement of his name or of his place of residence might identify him as a felon, but it is not enough that the answer to the question may furnish evidence out of the witness' mouth of a fact which, upon some imaginary hypothesis, would be the one link wanting in the chain of proof against him of a crime. It must appear to the court, from the character of the question, and the other facts adduced in the case, that there is some tangible and substantial probability that the answer of the witness may help to convict him of a crime. * * *

Petitioner's testimony summarized in paragraphs (c), (d), (e) and (f) did not relate in any substantial way to the offenses involved here. It is frivolous to contend that petitioner's testimony that he was the sole stockholder, officer and director of the Daisart corporation, tended to incriminate him in any way. That was a matter of public notoriety which, we suppose, was revealed repeatedly in records which were filed with governmental authorities. See Revised Statutes of New Jersey, 1937, 14; 5–1, 14; 6–2. It was as innocuous as the disclosure of his name and residence, which he concedes was no [redacted] vasion

Petitioner stated that it was customary for the manufacturers to supply the material upon which the work was performed by Daisart; that if surplus or waste resulted, it was tacitly understood that Daisart could sell it for its own account; and that in the manufacture of ammunition bags, the waste was an amount almost equal to the material actually used in the bags (R. 1024–1026). Petitioner stated further that the manufacturers did not charge Daisart for material but merely shipped it for use in connection with their respective contracts and Daisart billed the manufacturers for finished garments, on which it had supplied the labor and trimmings. The following colloquy then occurred (R. 1026–1027):

> Q. [By OPA official]: So that with respect to Daisart Sportswear Inc., contracting activities on ammunition bag materials [*sic*] were shipped by the manufacturer without bill?
>
> A. It was not. Metals Disintegrating Company being a foreign concern and being unable to furnish this material, they asked me to purchase materials for them. They were aware that I cannot do that without proper priorities. Those priorities were forthcoming in a blanket sum. No stipulated amount and I was further told to maintain a constant stock for any orders they may call. I mean Daisart Sportswear Inc., for any orders they may call for. Their orders came to me sometimes dated and never in any set size or specified form.

of his privilege against self-incrimination (Br. 17). The nature of the business in which the corporation was engaged stood on the same footing. It is a common, perhaps almost universal practice, for corporate charters to contain a statement of the business which is conducted. Moreover, there were undoubtedly thousands of corporations which were engaged in "the manufacture, purchase, sales of textiles and allied products" (R. 1015). How such a disclosure could have had any substantial relationship to any criminal offense is not apparent. Similarly, testimony concerning manufacturers who *owned* the material on which Daisart merely performed services and supplied trimmings, thereby producing finished garments which were re-shipped to the manufacturers, bore no relationship to the charges that petitioner illegally and unlawfully applied and extended priorities in order to *purchase* materials which he then diverted to the black market.

The disclosure of the names of three of the concerns from which petitioner purchased materials was, however, more closely related to the transactions underlying 12 of the counts of each information. The Court of Appeals determined that these disclosures were sufficiently substantial to warrant reversal of his conviction on those counts. Petitioner is entitled to no more.

He insists, however, that he disclosed another substantial clue, to wit, that there were several

They charged [*sic*] from day to day. I then went about purchasing material for their work. When and if I had a surplus, I would notify them and ask them if they had anything immediately on hand as I am overstocked, at which time they told me they had not and to dispose of it.

Q. This is a voluntary statement. You do not claim immunity with respect to that statement?

A. No.

Q. I assume that anything you tell us, Mr. Smith, is subject to verification? You state that after a time Metals Disintegrating Company, although it had a contract with the government, was not in a position to furnish you with the materials necessary for Daisart to manufacture this item?

A. Right.

Q. And that because of that situation, Daisart was required to obtain priorities so that Daisart could obtain the materials and that it did so?

A. In a blanket amount.

Q. And that pursuant to that priority, Daisart thereafter acquired materials, some of which were used in the manufacture of ammunition bags for Metals, and some of it was disposed of by Daisart, is that correct?

A. Yes.

Q. And those disposals by Daisart formed a good part of the sales of fabrics made by Daisart?

A. They did.

When a transcript of this testimony before the OPA official, Government Exhibit 147A (R. 1009–1030), was offered in evidence, petitioner moved for dismissal of the informations and the indictment on the ground that he had acquired immunity from prosecution by virtue of his testimony (R. 653–654). The trial judge reserved decision on this motion and admitted Exhibit 147A in evidence as against petitioner and the corporation (R. 655–656). He subsequently ruled that it was admissible only as against the corporation and so instructed the jury (R. 850, 857, 983). He held, however, that petitioner had not acquired immunity on account of his disclosures and denied the motions to dismiss the informations and indictment and to direct a judgment of acquittal (R. 850–853). Neither petitioner nor Deeb, his individual co-defendant, took the stand.

Petitioner and the corporation were each found guilty on 35 counts of each of the two informations.[2] These counts charged illegal application and extension of preference ratings and illegal diversions of more than 4,000,000 yards of cotton and rayon textiles. They were also found guilty

[2] Deeb, who actively participated in several of the transactions as salesman or broker for Daisart, was convicted on five counts of each of the two informations and on the indictment, and was fined $20,000 and sentenced to imprisonment for a year and a day. His conviction was affirmed by the Court of Appeals and his petition for a writ of certiorari was denied by this Court on December 6, 1948 (No. 294).

on the conspiracy indictment (R. 988–990). Fines totalling $710,000 each were imposed upon petitioner and the corporation and he was sentenced to a total of three years' imprisonment (R. 4, 8–9, 13, 1002–1003).

The Court of Appeals affirmed the convictions, except as to 12 counts of each of the two informations on which petitioner's conviction was reversed on the ground that he had acquired immunity from prosecution for those offenses which specifically related to transactions between Daisart and the three firms whose names he had divulged in his testimony before the OPA official (R. 1047, 1050). The reversal as to the counts decreased the total amount of petitioner's fines by $240,000. One judge dissented in part on the ground that petitioner had also acquired immunity from prosecution for the conspiracy charged in the indictment (R. 1038–1050).

SUMMARY OF ARGUMENT

The immunity provision of Section 202 (g) of the Emergency Price Control Act is co-extensive with the constitutional provision against self-incrimination. *Shapiro* v. *United States*, 335 U. S. 1. The general claim of "privilege as to anything that I say," which petitioner interposed soon after the beginning of his examination by the OPA representative, is not determinative *ipso facto* of his claim of immunity for the offenses

of which he stands convicted. His claim falls because he is unable to show that thereafter he testified, under compulsion, to incriminating facts which bore a substantial relation to those offenses. *Heike* v. *United States*, 227 U. S. 131.

1. Petitioner was charged, in substance, with the procurement of materials by the unlawful use of priorities and the sale of those materials at overceiling prices. His testimony before the OPA examiner that he was the sole stockholder, officer and director of Daisart, which was engaged in the business of manufacturing, purchasing and selling textiles, was innocuous. Similarly, his testimony that Daisart was a contractor for manufacturers of wearing apparel who owned the materials which Daisart made into finished garments, had no connection with the charges that Daisart itself unlawfully used priorities to *purchase* materials and then diverted such materials to the black market. Petitioner disclosed the names of three of the suppliers from whom Daisart purchased materials and under the decision below he has obtained immunity for all the offenses which involved transactions with those firms. The additional comment in his testimony that there were "several others but I cannot remember them" was not substantially related to the charges against him and was, in any event, unresponsive to the examiner's question, which presupposed the existence of other suppliers. The testimony that

materials were paid for by checks drawn on an account in a designated bank likewise bore no substantial relation to the offenses.

2. The only part of petitioner's testimony which tended to incriminate him in respect of the offenses of which he stands convicted consisted of his disclosures that Metals Disintegrating Company had furnished Daisart with priorities to enable the latter to procure materials with which to fill the orders of Metals; that Daisart had applied and extended those priorities in purchasing materials; and that surplus materials were sold. This part of his testimony was unresponsive to the question of the examiner and petitioner admitted that it was a voluntary statement for which he did not claim immunity. It is well established that a witness may waive immunity by a volunteered statement. The Court of Appeals was unanimously of the opinion that petitioner meant to volunteer this information and that it was so accepted by the OPA examiner. Consequently, immunity did not result from that part of his testimony.

3. The part of petitioner's earlier testimony in which he stated that surplus materials had been sold at cost plus transportation charges was implicity incorporated in his subsequent voluntary statement, and, therefore, was embraced within his waiver of immunity. In any event, it was self-exonerating testimony, showing that sales prices were lower than the OPA ceilings. Im-

munity does not result from testimony of a non-incriminating character, for, in the absence of an immunity statute, a witness is not entitled, under his constitutional privilege, to withhold such testimony. And a claim of immunity can be no broader than the constitutional privilege.

ARGUMENT

Introduction: The scope of the immunity statute

Petitioner's position is that he was compelled to make disclosures to an OPA official in response to a subpoena and hence should have been granted immunity for the offenses of which he stands convicted. His claim of immunity is predicated on the provisions of § 202 (g) of the Emergency Price Control Act of 1942, 50 U. S. C. App. 922 (g) (*supra*, pp. 2–3), to the effect that no person shall be excused from complying with any requirements to testify and produce documents under the act "because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893, * * * [*supra*, pp. 3–5] shall apply with respect to any individual who specifically claims such privilege." The Compulsory Testimony Act provides: "But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said commis-

sion, or in obedience to its subpoena, or the subpoena of either of them, or in any such case or proceeding," except for perjury committed in so testifying.

It is apparent that petitioner appeared before an OPA examiner pursuant to subpoena, made a claim of "privilege as to anything that I say" (R. 1011) and that his testimony "concerned," in some degree at least, "the transaction, matter or thing" for which he was subsequently prosecuted. Upon a literal construction of the statute, therefore, his claim to immunity would appear to have some color. But such a literal construction has been rejected by this Court and is manifestly contrary to authority, reason and policy. As the Court recently concluded in *Shapiro* v. *United States*, 335 U. S. 1, 19, Congress "intended the immunity proviso in the Price Control Act to be coterminous with what would otherwise have been the constitutional privilege of petitioner in the case at bar." For that reason, "the immunity provisions of the Compulsory Testimony act can be relied upon here only if the two prerequisites set forth in § 202 (g) are satisfied: (1) that the person seeking to avail himself of the immunity could actually have been excused, in the absence of this section, from complying with any of its requirements because of his constitutional privilege against self-incrimination, and (2) that the person specifically claim such privilege." *Id.* pp. 21–22.

Petitioner accepts the premise that the immunity accorded by § 202 (g) is "in all respects commensurate with the protection guaranteed by the constitutional limitation" (Br. 15). The term "commensurate" connotes, of course, that the statutory immunity is as broad, *but no broader,* than the constitutional privilege. Petitioner must show, therefore, that he was compelled, over a specific claim of privilege, to make testimonial disclosures which, in the absence of the immunity statute, he had the right to refrain from making because of his constitutional privilege.

The claim of "privilege as to anything that I say" which petitioner interposed soon after the commencement of his interrogation was apparently accepted by the OPA official (R. 1011). It could mean at most, however, that, in lieu of expressly repeated assertions of the claim of privilege against self-incrimination before each answer, it was understood by both parties that the claim would apply, for all that it was worth, as if it had been made before each answer. Clearly, however, the blanket claim of privilege was not *ipso facto* determinative of the award of immunity. Petitioner concedes as much: "We do not mean to assert that any innocuous testimony given by a witness, such as the giving of one's name or residence, would invade his legal rights against self-incrimination. The evidence obviously must be of

a more substantial nature which would go to the substance of the prosecution itself." (Br. 17.) Obviously, also, the evidence must have been *compelled*. That is, it must have been called for by the question. Otherwise, a witness could use the immunity statute as a trap by volunteering, unresponsively to any question, disclosures of criminal connections and thereby purge himself of those crimes. Moreover, it must be at least inferentially clear that his general claim of privilege was not retracted in the course of the examination, i. e., that he continued to claim the privilege for each answer. Since the privilege was personal to the witness, he could, of course, have waived it at any time. Thus, we must examine each answer which is now urged as a basis for immunity and determine (1) whether it was, in fact, compelled over a claim of privilege, and (2) whether it was substantially related to the offenses of which petitioner stands convicted.

Petitioner does not deny that these limitations govern claims of immunity. He contends in effect that they were satisfied in this case. We maintain that the only part of his testimony which substantially related to the offenses of which he stands convicted was that part which concerned the procurement of materials by means of priorities and the sale of such materials. And we maintain further that petitioner volunteered that part of his testimony and expressly waived as to it any

claim of immunity. The Court of Appeals so held. The dissenting judge was of the opinion that although the waiver applied to the counts of the informations of which he stands convicted, involving illegal use of priorities, it did not extend to the charge of the indictment of conspiracy to violate the Emergency Price Control Act. In his opinion, that part of petitioner's voluntary statement in which he said that he sold surplus materials did not embrace petitioner's prior testimony that he sold such materials at prices consistent with formulae prescribed by applicable OPA regulations. But, as we shall show under Point III, this latter testimony was self-exonerating, and immunity does not result from such testimony.

I

The only part of petitioner's testimony which bore a substantial relation to the offenses of which he stands convicted was that which concerned the procurement of materials by means of priorities and the sale of such materials

Although it is not entirely clear which part of his testimony petitioner relies upon in support of his claim of immunity, as we read his brief, he appears to include the following, but rests primarily on the first two items, (a) and (b):

(a) Daisart was a contractor for Metals Disintegrating Company, which had a prime contract with the Government to manufacture ammunition bags; Metals furnished Daisart with suitable pri-

Accordingly, the counts of the informations of which petitioner now stands convicted, and which related to the abuse of priorities, were unanimously sustained against the claim of immunity.

In respect of the charge in the indictment of conspiracy to violate the Emergency Price Control Act and the OPA regulations, the majority also concluded that petitioner's voluntary statement that he had sold surplus materials procured on priorities and that such sales formed a good part of Daisart's sales (par. (a), *supra*, pp. 22–23), was sufficiently comprehensive in scope to include within his waiver his prior statement that the surplus had been sold "at the price billed to me plus freight and haulage and less discount allowed to me" (par. (b), *supra*, p. 23). Thus, the majority of the court held that petitioner also had waived immunity in respect of the charge of the indictment. The dissenting judge, on the other hand, was of the opinion that the volunteered statement did not encompass any disclosure concerning the price at which the surplus material had been sold but only that it had been sold.

We think the majority of the court correctly interpreted the scope of petitioner's voluntary statement. He had first testified that surplus materials were sold at net cost plus transportation charges, which was obviously lower than the OPA ceiling price (R. 350). Subsequently, in the statement for which he disclaimed immunity, he disclosed that the surplus material which had been

procured by means of priorities had been sold. In view of his prior statement, he obviously meant that such surplus had been sold "at the price billed to me plus freight and haulage and less discount allowed to me." As the Court of Appeals observed (R. 1046): "The whole tenor of his volunteered statement is that he was making perfectly valid sales, just as he had previously explained; the fact that he does not here repeat the OPA formula (which was of course no news or no new lead to the examiner) should not now procure him an immunity which, as it seems clear to us, he did not intend at the time to claim."

In any event, however, petitioner's claim of immunity on the charge of the indictment falls for still another reason. The disclosure that the surplus was sold at or below the maximum price prescribed by the OPA regulation was an exculpatory statement and, for that reason, as we shall show under Point III, it does not support petitioner's claim of immunity.

III

Petitioner's testimony concerning the prices at which he sold materials was self-exonerating. Immunity does not result from such testimony

Petitioner cites no authority other than Judge Hand's dissenting opinion for his contention that he was entitled to immunity on the charge of the indictment, despite the fact that the only testimony he gave substantially relating to that offense

showed compliance with the OPA ceiling prices (R. 350) and, therefore, was a representation of complete innocence (Br. 23–24). He disregards the premise expressly laid down by this Court in the *Shapiro* case, 335 U. S. 1, that the immunity granted by section 202 (g) of the Emergency Price Control Act was merely an *exchange* for the constitutional privilege against self-incrimination. And since we shall show—what seems almost self-evident—that in the absence of an immunity statute petitioner would have been excused under his constitutional privilege only from supplying *incriminating* testimony, his claim of immunity on the charge of the indictment has no merit.

Judge Hand stated that "the privilege [the statutory immunity?], if it is to exist at all, must include all questions which are relevant to the witness's guilt, regardless of how he will answer them" (R. 1048). Similar reasoning was employed by Judge Humphrey in *United States* v. *Armour*, 142 Fed. 808, 822 (N. D. Ill.):

> Now, in my judgment, the immunity law is broader than the privilege given by the fifth amendment, which the act was intended to substitute. The privilege of the amendment permits a refusal to answer. The act wipes out the offense about which the witness might have refused to answer. The privilege permits a refusal only as to incriminating evidence. The act gives immunity for evidence of or concerning the

> matter covered by the indictment, and the evidence need not be self-incriminating. * * *

But Judge Humphrey's views as to the scope of an immunity statute in relation to the privilege were implicitly repudiated by this Court in *Heike* v. *United States*, 227 U. S. 131, and in *Shapiro* v. *United States*, *supra*.

The Fifth Amendment protects a person from being compelled to be a witness against himself. "It is designed to prevent the use of legal process to force from the lips of the accused individual the evidence necessary to convict him or to force him to produce and authenticate personal documents or effects that might incriminate him." *United States* v. *White*, 322 U. S. 694, 698. It is difficult to perceive how petitioner was compelled to be a witness *against* himself when indeed he falsely exonerated himself. "The prohibition against his being compelled to testify against himself presupposes a legal detriment to the witness arising from the exposure." *Brown* v. *Walker*, 161 U. S. 591, 600. As Professor Wigmore noted: "The privilege, by hypothesis, would have been violated only if the witness had truly confessed his crime, but if he denies it and falsely exonerates himself, he has confessed no fact 'against himself'." 8 Wigmore, *Evidence* (3d ed. 1940) § 2282, p. 504.

In claiming the constitutional privilege, a witness necessarily asserts his belief that the testi-

other firms from which he purchased textiles. The tenuous argument runs in this fashion: True, petitioner disclaimed any recollection of the names of the firms (a remarkable lapse of memory considering the fact that his transactions with these firms within the previous year had comprised millions of yards of textiles (see, e. g. R. 141, 241, 248, 300) and in the case of one company had cost petitioner more than $269,000 (R. 139)); nevertheless he had informed the examiner that there were other suppliers; this information, coupled with the disclosure that Daisart had an account at a particular bank, enabled the Government "to trace the companies which were the unnamed suppliers of the petitioner. In this manner the Government was able to set out the various counts in each of the two informations and ultimately obtain his conviction thereon." (Br. 9.)

Certainly, the revelation that the corporation had an account in a specified bank—information which normally appears in resolutions contained in corporate minute books—was perfectly innocent. In effect, petitioner is contending that if he had not told the Government investigators that there were other suppliers, they would have accepted his testimony that the three named firms were the exclusive suppliers of materials and would not have thought of looking at the bank records. He overestimates their credulity. To put it another way:

If petitioner were not already suspect, the information that there were "other suppliers" would have been insignificant and would have passed unnoticed; and if he were already suspect, such information would have been meaningless since it would have cast no light on his criminal connections. Knowledge that petitioner had purchased material from several suppliers was obvious from the nature of his business and provided no new lead to the discovery of his offenses. It may be noted also that the examiner's question presupposed the existence of suppliers of material and inquired merely whether petitioner could furnish their names. His answer was no more in substance than the familiar, "I don't remember." Surely petitioner is not entitled to be rewarded for his convenient lapse of memory.

We are thus brought to a consideration of the testimony summarized in paragraphs (a) and (b) above, upon which petitioner primarily relies for his claim of immunity. There can be no question that these disclosures "concerned" in a substantial way the charges on which petitioner was later prosecuted. That is what we meant by the concession in our brief in opposition to the petition for certiorari, in which we stated (p. 10): "Petitioner Smith concededly gave testimony before the OPA official which substantially related to the transactions which were the subject of the indictment and the informations." We did not

concede, as petitioner implies we did (Br. 21), that *all* the matters and things about which he testified were directly connected with the offenses of which he stands convicted. Quite the contrary. The part does not include the whole.

II

Petitioner's statements concerning his procurement of materials by means of priorities and the sale of such materials were voluntary and he expressly waived any claim of immunity in respect of those matters

In the absence of the immunity provisions of § 202 (g), petitioner would have been entitled to remain silent only to the extent permitted by the constitutional privilege. Clearly, however, he could have volunteered information and thereby waived the privilege. *Raffel* v. *United States*, 271 U. S. 494. Nothing in the immunity statute prevents a witness from similarly volunteering information. In *United States* v. *Monia*, 317 U. S. 424, this Court held that in respect of an immunity statute which did not require a specific assertion of the privilege, testimony was not voluntary merely because a witness did not claim the privilege after appearing before a grand jury in obedience to a subpoena. The *Monia* decision does not mean, of course, that under an immunity statute a witness cannot volunteer information and thus waive any claim of immunity. Under the type of immunity statute there involved, an *affirmative* surrender of the privilege

is required before a witness can be said to have waived immunity. Failure to claim the privilege is not enough to constitute a waiver. But under § 202 (g), the witness must specifically claim the privilege if he is to obtain immunity. This shift in emphasis does not mean that the witness gains immunity for volunteered information. There is no reason why he cannot waive the claim of privilege in part or in whole; or having claimed it at the outset for all his testimony, why he may not subsequently retract it or modify it. When he gives answers which are not responsive to questions such answers cannot be said to be "compelled," particularly where, as here, the witness is intelligent and advice of counsel is readily available. To the extent that he goes beyond the requirements of the question, he has himself retracted to that extent his claim of privilege.

Petitioner seems to rest upon the blanket claim of privilege which he asserted at the outset of the interrogation. But that is only the starting point of consideration of our problem, not the finish. The blanket claim of privilege placed petitioner in a position to assert immunity if, but only if, he thereafter had furnished incriminating testimony which was responsive to the questions of the examiner. The scope of immunity is limited by the questions asked, and is therefore within the control of the examiner. Such control must rest with the examiner, or he will not dare ask any

questions of a witness asserting the privilege—thereby completely defeating the purpose of the immunity statutes. Certainly, if, after the general claim of privilege, the official had asked petitioner only his name and address, petitioner would not thereby have acquired immunity. It is, therefore, misleading to say, as petitioner does (Br. 13), that if the examiner did not wish to exchange immunity for testimony "he should have stopped further inquiry." It is also a significant overstatement to argue (Br. 6) that petitioner advised the OPA representative that "he was claiming his right of immunity under the relevant Statute, and that such claim of amnesty would apply to all questions thereafter put to him on such examination and the answers made by him in response thereto." All petitioner could claim as a witness was a privilege against self-incrimination; immunity was obtained only if his testimony complied with the conditions, express and implied, in § 202 (g), as this Court noted in the *Shapiro* case.

Coming, then, to the particular disclosure that petitioner had purchased materials by the use of priorities which had been furnished to him in a blanket sum by Metals Disintegrating Company to enable him to fill their orders and that he disposed of such materials as were surplus for that purpose (par. (a), *supra*, pp. 22–23), it is clear that the immediate question which evoked his statement could have been answered by a simple "Yes" or "No."

Instead, he volunteered a detailed recital of his method of operation in his deals with Metals and introduced (for the first time in his entire testimony) a reference to priorities. The examiner immediately said, "This is a voluntary statement. You do not claim immunity with respect to that statement?", to which petitioner forthrightly replied, "No." (R. 1026–1027.)

Petitioner begs the question in stating that the examiner's comment was made "while the above answer was still within the purview of petitioner's claim of privilege." (Br. 27.) As we have stressed, petitioner had a claim of privilege only as to answers that were "compelled." His blanket claim of privilege did not confer "amnesty" upon him for every criminal connection which he might voluntarily divulge.

Despite the undisputed fact that neither petitioner, who had shown himself to be alert to his rights, nor his counsel, who was by his side, attempted in any manner to qualify the answer "No," the specious argument is now advanced (Br. 27) that perhaps petitioner was merely contradicting the first part of the examiner's comment and was not admitting that the statement was voluntary. To the contrary, at the trial 18 months later, petitioner's counsel characterized the answer "No" as a disclaimer of immunity, in the following colloquy (R. 854):

> [The Court.] In response to a question which the witness George Smith was asked, as follows:

"This is a voluntary statement. You do not claim immunity with respect to that statement?"

And the answer purported to have been given by him is, "No." That one answer will be received in evidence as to the defendant George Smith.

Mr. HART. May I be heard on that, your Honor?

The COURT. Yes.

Mr. HART. Your Honor will note that previous to that particular question and answer the defendant George Smith did claim privilege as to any questions which thereafter might be asked of him. He further gave this answer: he was asked by the Examiner: Do you claim immunity with respect to that answer?" and his answer was: "No."

Now, while your Honor might have a basis for ruling that with respect to that answer he does not have immunity, he still has privilege, and it certainly cannot be received as evidence. He was not asked whether he waived privilege; he was asked whether he waived immunity.

The COURT. That was referred to as a voluntary statement.

Mr. HART. That is the statement of the Examiner.

The COURT. That was the statement of the Examiner and I will resolve that question in favor of the defendant George Smith, and I will exclude the entire statement as to the defendant George Smith,

> including that one answer. I will admit it, of course, as to the defendant Daisart Sportswear, Inc.

Furthermore this was not the first time in the course of the examination that petitioner had made unresponsive answers (R. 1013). He was in no wise intimidated by the examiner. He availed himself of the advice of counsel, as in the instance when he refused to disclose the name of the individual doing business as Daisart Manufacturing Co. "unless on advice of counsel" and the question was withdrawn when his counsel objected to it as beyond the "scope of the subpoena" (R. 1020). When he was asked the names of his customers, he replied, "I could name some, but I would rather not answer" (R. 1020). In view of his mental agility in evading and limiting answers, equivocation cannot now be attributed to his disclaimer of immunity.

It should be noted that eight months previously petitioner had disclosed to investigators of the War Production Board, the agency primarily concerned with abuses of the priority system, his dealings with Metals Disintegrating Company, his use of priorities in purchasing fabrics, and his sales (R. 383, 399). We suggest that he may well have thought that if such information was incriminating, the damage had already been done. Moreover, he may have considered that phase of his operations insignificant so far as the investigation *by the OPA* was concerned; hence, his readiness to

admit that the particular disclosures were voluntary. In this connection, also, we should appreciate the fact that petitioner declined to answer or professed no recollection of the really crucial transactions about which the examiner was inquiring. And since the books and records which petitioner was required to keep (*Shapiro* v. *United States, supra*) were conveniently "lost or misplaced" (R. 1013), the Government had to rely on outside sources of information.

Much is made by petitioner of the trial judge's exclusion, as against petitioner, of his testimony before the OPA. The colloquy between petitioner's counsel and the court on that point has been quoted above (pp. 31–33). Petitioner interprets this exclusion to mean that the trial judge found that there was no voluntary statement by petitioner (Pet. Br. 30). In any event, the only evidence before the trial court on this point was the transcript itself and the Court of Appeals had at least equal opportunity to appraise it and draw the necessary inferences. Indeed, it was in a better position to deliberate on the voluntariness of the statement than was the trial court, in view of petitioner's failure to claim immunity properly before trial by a motion to dismiss under Rule 12 (b) of the F. R. Crim. P. He first raised the claim during the course of the trial.

There was no disagreement in the Court of Appeals that paragraph (a) of petitioner's testimony

was in fact voluntary, and constituted, as far as it went, a waiver of immunity. Judge Clark stated that (R. 1043):

> While this account thus to a certain extent overlapped testimony previously given it was at once a clearer, more connected, and more succinct statement of Smith's and the Daisart method of operation than had previously been disclosed. It is well settled that the immunity extends only to *compelled* testimony and, indeed, we have applied the doctrine of waiver of immunity under circumstances where the intent of the witness was less clear than here. *United States* v. *DeLorenzo*, 2 Cir., 151 F. 2d 122. Even where this testimony repeated previous answers which would have been subject to the witness' initial general claim of immunity, we see no reason why a witness cannot qualify and limit his claim as the examination proceeds, just as he can make new claims as to issues he has not waived. The Government indeed contends that the waiver should be held to cover all the testimony extracted so as not to bar this prosecution in any way. We think, however, that this would go beyond the intent of the witness and clearly beyond what the examiner understood and acted upon at the time. A more reasonable approach is to apply the waiver to the extent and in accordance with the intent of the witness, as the examiner accepted it at the time.

mony will incriminate him. In Aaron Burr's trial, Chief Justice Marshall required the witness Willie to state on oath that his answer would tend to incriminate him. *United States* v. *Burr*, 25 Fed. Cas. 38, No. 14, 692e; *Mason* v. *United States*, 244 U. S. 362, 364. A witness is entitled to remain silent only if the court finds that some answer to a particular question *could* incriminate him and the witness asserts that the particular answer which he would give (which necessarily means *truthfully* give), *would* incriminate him. *Mason* v. *United States*, *supra*. Clearly, a witness is not excused from answering if his answer would tend merely to subject him to public disgrace (*Brown* v. *Walker*, *supra*, 598), expose him to civil liability (cf. *Vajtauer* v. *Comm'r. of Immigration*, 273 U. S. 103), or incriminate him under the laws of another jurisdiction (*United States* v. *Murdock*, 284 U. S. 141; cf. *Feldman* v. *United States*, 322 U. S. 487; *Jack* v. *Kansas*, 199 U. S. 372). *A fortiori* he is not excused if the answer would tend to exonerate him of any crime.

In the absence of a proper claim of privilege, petitioner was under a duty to disclose his transactions to the OPA investigator, who was properly conducting an administrative inquiry under the authority of the Emergency Price Control Act. As noted in the dissenting opinion in *United States* v. *Monia*, 317 U. S. 424, 432–433:

> Duty, not privilege, lies at the core of this problem—the duty to testify, and not the privilege that relieves of such duty. In the classic phrase of Lord Chancellor Hardwicke, "the public has a right to every man's evidence." The duty to give testimony was qualified at common law by the privilege against self-incrimination. And the Fifth Amendment has embodied this privilege in our fundamental law. But the privilege is a privilege to withhold answers and not a privilege to limit the range of public inquiry. The Constitution does not forbid the asking of criminative questions. It provides only that a witness cannot be compelled to answer such questions unless "a full substitute" for the constitutional privilege is given. *Counselman* v. *Hitchcock,* 142 U. S. 547, 586. The compulsion which the privilege entitles a witness to resist is the compulsion to answer questions which he *justifiably* claims would tend *to incriminate* him. [Italics supplied.]

Accordingly, if, in the absence of an immunity statute, petitioner had remained silent even though the evidence would not have incriminated him, such silence would have been in derogation of his duty. Immunity which is intended to be exchanged for the surrender of a privilege should not serve as a reward for fraudulent evasion of a duty.

Judge Hand expressed concern for the supposed dilemma of a witness who was required to testify

under section 202 (g): unless he is granted immunity from prosecution for his false and exculpatory statement, "the result would be to compel him, if he were in fact guilty, either to confess his guilt, or to add perjury to it" (R. 1048). But one horn of the dilemma is quite comfortable, for, if he confessed his guilt, he thereby obtained immunity from prosecution. The public disgrace which might ensue is of no more consequence under the immunity statute than it is under the constitutional privilege. That point was disposed of long ago with the decision in *Brown* v. *Walker*, 161 U. S. 591. And it is significant that in a dissenting opinion in that case, Mr. Justice Shiras expressed the same concern for the witness as Judge Hand does here (161 U. S. at 622):

> * * * If he declines to testify on the ground that his answer may incriminate himself, he is fined and imprisoned. If he submits to answer, he is liable to be indicted for perjury by either or both of the parties to the controversy. His position in this respect is not that of ordinary witnesses testifying under the compulsion of a subpoena. His case is that of a person who is exempted by the Constitution from testifying at all in the matter. He is told, by the act of Congress, that he must nevertheless testify, but that he shall be protected from any prosecution, penalty or forfeiture by reason of so testifying. But he is subjected to the hazard of a charge of perjury,

> whether such charge be rightfully or wrongfully made. It does not do to say that other witnesses may be so charged, because if the privilege of silence, under the constitutional immunity, had not been taken away, this witness would not have testified, and could not have been subjected to a charge of perjury.

But this view gives inadequate weight to the competing duty of disclosure which is imposed upon every person as an essential part of the administration of justice. Every witness who is involved in crime is faced with the necessity of making a choice when he is called upon to testify. The problem is not peculiar to the immunity statute. Even in its absence, if petitioner were summoned by a Government investigator he would face the problem whether (1) to confess an incriminating fact, (2) to commit perjury or (3) to claim his privilege and thereby risk the probability that the investigator would draw adverse inferences which would stimulate a search for incriminating evidence. The same problem is present in a jury trial. "We need not close our eyes to the fact that every person accused of crime is under some pressure to testify, lest the jury, despite carefully framed instructions, draw an unfavorable inference from his silence." *Raffel* v. *United States*, 271 U. S. 494, 499.

Petitioner points to the proviso in the Compulsory Testimony Act of February 11, 1893,

"That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying" and states that "the net effect of the quoted portion is that immunity is to be granted in any event" (Br. 24). But the ostensible and direct interpretation is merely that *perjury is punishable* in any event. It will not do to say that immunity is a *quid pro quo* for perjury. As Mr. Justice Holmes stated in the *Heike* case, 227 U. S. at 141, "This last proviso was added only from superfluous caution and throws no light on the construction [of the immunity statute]," citing *Glickstein* v. *United States*, 222 U. S. 139, 143, 144.

The very purpose of the immunity statute was to obtain *truthful* testimony. No public purpose is served by obtained false and misleading information. Cf. *Glickstein* v. *United States*, *supra*; *Edelstein* v. *United States*, 149 Fed. 636, 643–644 (C. A. 8), certiorari denied, 205 U. S. 543. Although the immunity provisions which were construed in those cases were more limited than § 202 (g), the rationale is no less pertinent. In the *Glickstein* case the Court said:

> * * * the statute expressly commands the giving of testimony, and its manifest purpose is to secure truthful testimony, while the limited and exclusive meaning which the contention attributes to the immunity clause would cause the section to be a mere license to commit perjury, and

hence not to command the giving of testimony in the true sense of the word.

In *Carchidi* v. *State*, 187 Wis. 438, 442–444, which involved an immunity statute which was identical with the Compulsory Testimony Act of 1893, immunity was claimed for exculpatory testimony which was given before a grand jury in response to a subpoena. The claim was denied in an illuminating opinion from which we quote at length as a review of our position:

> We are unanimously of the opinion that the correct rule of construction to be given our immunity statutes finds expression in the concurring opinions of Mr. Justice Marshall and Mr. Justice Winslow in *State* v. *Murphy*, 128 Wis. 201, 107 N. W. 470. It is plain that these immunity statutes, to be found in many states as well as in the acts of Congress, originated because of the constitutional provision that no witness shall be compelled in any criminal case to be a witness against himself. These immunity statutes were enacted for the purpose of procuring evidence which was not available because of this constitutional provision. * * *
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> * * * * *
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> A dominant principle of statutory construction is that to ascertain the legislative intent we may look to the evil to be remedied and the evident purpose of the legislation. When we do that, taking into consideration the development of criminal

law in this country, the difficulties that the public have encountered in securing convictions in certain classes of cases, we have no doubt that these statutes were passed for the express purpose of placing at the disposal of public prosecutors evidence which the constitutional provision denied, and that in order to entitle a witness to the immunity granted by these statutes the evidence given by him must have been of a character which he was privileged to withhold under the constitutional provision. Testimony given by him which he is not privileged to withhold by reason of the constitutional provision does not entitle him to the immunity afforded by the statutes under consideration.

A consideration of the evidence given by the defendant before the grand jury discloses that he there testified to nothing that in any manner or in the remotest degree could tend to convict him of crime. Such testimony as he gave with reference to the transaction upon which his conviction in this case is based went to the establishment of his innocence rather than his guilt. He denied that he did or said anything tending to defraud or which could be considered as obtaining money under false pretenses, and in no view of the case should his plea in bar have been sustained. Our attention has been called to no authority in conflict with this conclusion except the case of *U. S.* v. *Armour & Co.*, 142 Fed. 808, referred to in Mr. Justice Dodge's opinion, expressing

views which this court deliberately refused to sanction, according to the note written by Mr. Justice Marshall, to be found at page 217.[3]

Petitioner seems to imply (Br. 18–19) that, although the testimony that he had complied with OPA ceilings was intrinsically exonerating in nature, it was nevertheless incriminating because it disclosed knowledge on his part of the limitations imposed by the OPA on the sale price of goods. But since all who engaged in businesses subject to OPA regulation were presumed to know the OPA ceilings, there is no substantial connection between testimony admitting knowledge of the applicable regulation and the offense of selling at an excessive price. Certainly, if petitioner had been asked a direct question whether he knew the formula for computing OPA maximum prices, an affirmative answer would not have gained him immunity.

In summary, we maintain that petitioner did not obtain immunity on the charge of conspiracy to violate the Emergency Price Control Act because either (a) his disclosure of the price at which he

[3] In *Stone* v. *State*, 96 Tex. Cr. 211, the defendant appeared before the grand jury and, like petitioner, falsely exonerated himself. He was denied immunity for "manifestly his testimony disclosed the truth of no facts upon which this prosecution was originated or upon which this conviction rests. It would seem to follow logically that he was not being tried and is not now being punished 'for acts disclosed by such testimony'."

had sold the textiles was embraced within the tenor of the volunteered statement, as the majority of the Court of Appeals held, or (b) in any event, it did not in any way tend to incriminate him.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be affirmed.

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